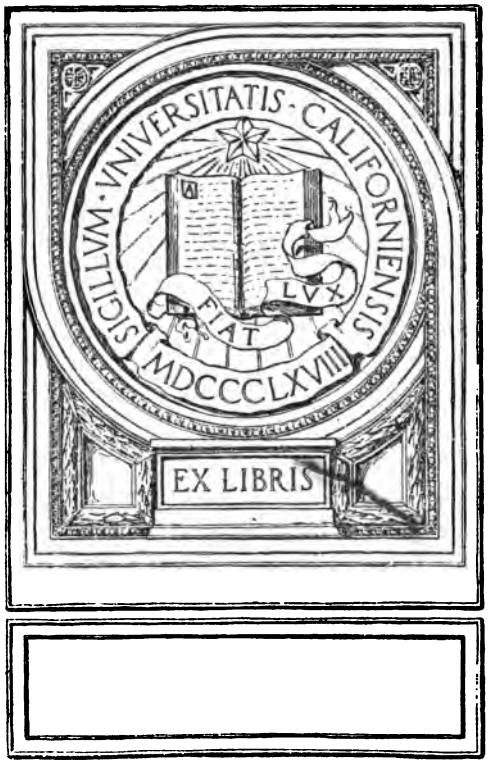
THE ISOLATION PLAN

By WILLIAM H. BLYMYER



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WITH

PAPERS ON THE COVENANT

By WILLIAM H. BLYMYER

THE CORNHILL PUBLISHING CO.
BOSTON

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FOREWORD

This plan is a whole. It is composed of three chief features: general disarmament, arbitration and the sanction of non-intercourse. Each is a complement of the other two and all are essential for its successful operation. Many persons have seized one, become enthusiastic and started off to make some use of it; but my observation has yet to embrace the first instance in which I have felt that the balance in their interdependence had been fully grasped.

* * * * *

Only one kind of disarmament is practicable—general disarmament—and the assertion is ventured, that, under no other plan can it be achieved and maintained, as the lines on which this is formulated are basic. No other one provides the first condition for it, which is the compulsory settlement, without resort to war, of **all** classes of disputes.

* * * * *

As soon as the laborers of the world realize, that there is a plan by which wars can be stopped, they will refuse to allow lords, titled, or non-titled, to maintain immense war establishments,

so as to move them about, like pawns, to kill one another; for the payment of it all depends upon the brawn of their arms.

Cannot the liberally-educated of the world anticipate such action by comprehending the interdependence of, and the necessity for, these features and proceed at once to install this system?

W. H. B.

PREFACE TO THE FIRST PUBLIC EDITION

No change has been made in the text of this work, in the present edition.

The subjects were treated so thoroughly in the original, that constant study of the events of the succeeding years has not suggested the desirability of adding to the principles presented, although opportunities for the useful application of them have been crowding up.

The first of the copies distributed was sent to President Wilson, and, subsequently, copies with marked passages bearing on special topics as they came to the fore were addressed to him. An examination will show that it contains all of the principles which the President subsequently embodied in his "Fourteen (and other) Points;"[1] for, while it deals primarily with an institution for compulsory arbitration and general disarmament as a judicial system, it also contains suggestions for conventions regarding the other subjects: self-determination (especially with reference to Alsace-Lorraine and colonies), territorial integrity, freedom of the seas, outlets to the sea, immigration, freedom to circulate, economic barriers, the necessity, in order to establish an enduring peace, of a negotiated convention, and not a dictated instrument, etc., etc.

Secret treaties would be precluded, as entire dependence would be placed in a system of uniform law.

The President's remarkable presentation of those principles, as ideals, secured for them universal approval, save from the imperialistically inclined.

(1) See "Annex VIII"

An examination will show, in proof of the above statements, that, were the "Covenant" discarded and the belligerent nations relegated to the situation which obtained at the time of the acceptance of President Wilson's "Points," as the basis of the peace, **the provisions under "A Proposed Convention for Compulsory Disarmament and Arbitration" (p. 57) and the several suggestions for conventions on other topics (pp. 45-49), all in statutory form, would adequately provide for the establishment of those principles, for which Americans were allowed to suppose that they were contributing to the war.**

When published, it was, and doubtless still is, the only work which treated all, or any number, of these subjects (which is here done in the compass of three score pages) and is the only one known to the writer which provides for a system of enforcing international obligations without the use of armed force, a system, moreover, under which all nations would co-operate to give support because of the srongest of incentives—self-preservation.

While the principal feature in this "Plan," the sanction of non-intercourse, or isolation, to force nations, was adopted by the Paris Conference, the Committee limited its employment in the "Draft" to compel submission to the jurisdiction, of the League, only. It then extended it, in the adopted "Covenant," so as also to enforce compliance with decisions, in conformity with one of the suggestions supplied it in the writer's "Memorandum on the Draft" (Annex III), but its application, like that of all of the provisions for supposed benefits under the Covenant, was so qualified by conditions as to leave no obligation that a powerful nation might not avoid.

As the revised Covenant still provided for a coalition, invested with powers for imperial domination, based on a "Victor's Peace," requiring discretionary action (diplomacy) in all important operations, and not simply a judicial institution following the scope of the Hague Conventions, to work almost automatically and without preference, as is set forth in this work, the writer published a "Memorandum on the Covenant" (Annex V), in the hope that it would be brought into closer conformity with the ideals, but no further revision was made.

The subjects which seem to Americans to be the most vital to them, are those concerning the maintenance of the Monroe Doctrine (Art. XXI) and the guarantee of the integrity of the Nations (Art. X). In regard to the former, attention is directed to the diminution of the importance that that Doctrine would have under a system of general disarmament (p. 30); and, as to the latter, to the complete protection that the sanction of isolation would afford to each independent state, large or small (pp. 31, 46 and 50), and the much greater ease with which backward nations could be forced from the outside to observe civilized conduct, than to enter their territories and attempt to regulate all of their actions.

As the Covenant embodies most of the plan of The League to Enforce Peace, the difficulties that might arise, were an attempt made to operate under it, would be largely those presented at page 37 *et seq.*, regarding co-operation, the mobilization of armed forces, etc., upon the failure of voluntary submission by a nation. The provisions of the Covenant, too, are grossly defective, inasmuch as openings for war are left in it, and yet it marks no attempt to develop further rules of warfare.

Comments on the Draft Scheme for a Permanent Court are contained in Annex IX.

No discussion is undertaken of the "reservations" proposed by the Senate. The writer believes, with President Eliot, that they add nothing. The astute British diplomatists saw to it that the provisions of the Covenant should be unworkable whenever it was not to their interest to have them operate and injected reservations at every turn. We can avail ourselves of the same provisions, if that is our reason for having a Covenant. The difference in conduct is, that we are simple-mindedly emphasizing what we would probably refuse to do; while they, diplomatically, are reserving the expression of their intentions, so as to have double exits from which to choose in emergencies. A number of our Senators understood this and some of them doubtless discussed reservations in order to gain time for the public to become educated as to the "Covenant" and overcome the influence exerted by the short-visioned peace workers supported by their foundations.

Imperious grounds, independent of the reservations, for the rejection of The Covenant by America and almost all other nations, are set forth in Annex VII: "The Covenant as a Diplomatic Achievement," showing how the management of the League has been seized by one nation.

A warning should be expressed as to the application of the sanction of non-intercourse, or isolation. It has been suggested as a means to be employed by the Council to coerce Russia. No such employment of it is recommended by the writer. It could not stand the strain and such an

attempt might result in discrediting this measure which now many believe will prove to be the key to the accomplishment of disarmament. It should only be introduced at a time when a compulsory arbitration system and general disarmament are simultaneously established under an international convention supported by at least the greater part of the nations.

A profound consideration of the chapter on "Non-justiciable Cases" is solicited; for both under the Covenant and the report of the Jurists' Advisory Committee, prepared at The Hague, the assumption continues that there must be such cases; and yet in neither is provision made for the compulsory adjustment of them. If so, armaments must be continued to care for them—unlimited armaments, for no nation will stop short of its utmost, if necessary for success—and conventions will be meaningless. Germany, however, is bound to submit her grievances of whatever class to arbitration, as she is not to be allowed to arm (generally); and yet the Allies feel, that she will not thereby be deprived of justice. Is not the sentiment of the people of all countries, now animated for a League, strong enough to induce them to also assume this risk?

Thus far, the writer has not been advised that the sanction of non-intercourse as an organized means among nations to enforce compliance with law, was ever suggested before his advocacy of it, despite the rule of historical recurrences. Some one has referred to the scheme of Jean Jacques Rousseau in his essay on Perpetual Peace, as having comprised this idea; but, while Rousseau provided, in Article III, that the League should put the refractory nation "under the ban," in the following

Article, he showed that he had no conception of an economic restraint, for he added that the States should then unite to attack it.

On the day that this book was copyrighted, Aug. 17, 1917, the New York Times published a translation of "The Pope's Proposal," made from the French by the U. S. State Department, the gist of which, identical with this plan and probably taken from the report of the Rouen Peace Congress (1903), is contained in the following paragraph:

> "First, the fundamental point must be that the material force of arms shall give way to the moral force of right, whence shall proceed a just agreement of all upon the simultaneous and reciprocal decrease of armaments, according to rules and guarantees to be established, in the necessary and sufficient measure for the maintenance of public order in every State, then, taking the place of arms, the institution of arbitration, with its high pacifying function, according to rules to be drawn in concert and under sanctions to be determined against any State which would decline either to refer international questions to arbitration or to accept its awards."

The operation of The League in the first session of the Assembly has but demonstrated the defects set forth in the Annexes. Comment on it would only be to repeat them and call attention anew to the principles set forth in this book.

At a time when indications point so favorably to the adoption of almost the whole "Plan" advocated in this work, the writer may be excused from referring to the men-

tal anguish that he suffered during the many years preceding the war that he urged it, both here and in Europe, because of his confidence in its efficacy to ward off the calamity of war, but impotence to interest more than a few isolated persons in it, although the character of those few was such as to give him redoubled assurance of the correctness of his views. At the time of its publication and distribution in the present form, in 1917, its adoption would not only have assured to America her main object in the war and, as urged on page 50, saved the immense waste, estimated, with loans to the Allies, at nearly forty billion dollars, to her alone, with gigantic interest and pension obligations and untold economic distress, but the immeasurable loss of fifty thousand lives overseas, another fifty thousand disabled by shell-shock and seventy-five thousand by tuberculosis, to say nothing of other diseases and demoralization or of privations and infection bringing even death to those at home.

From that date on, the writer feels, that the Central Powers would willingly have adopted it; and, for many months thereafter, the Allies, now uncontrollable in their demands, could, at any time, have been persuaded to accept it under the risk of losing America's support. Finally, had the President but remained at home and insisted upon a treaty and convention in accordance with the "Wilson Points," it would have been to have achieved the "Plan" and have saved the awful physical sufferings that Europe has since been compelled needlessly to bear.

When those opportunities appeared and were passed without being seized, that anguish was intensified, but only endured through the contemplation that it was "the way of the World"—"Eyes have they, but they see not."

The Allies are, however, beginning to see that many of their demands are futile, and that the Covenant, providing only for a coalition for domination, is unworkable; while public opinion in America, if correctly expressed in the platform of the Republican Party, the utterances of the President-elect and the overwhelming vote, is crystallizing exactly along the lines of this Plan, which is based upon arbitral procedure aiming to secure the greatest possible impartiality and justice.

The foundation for international relationship is definitely laid in the most solemn manner, by the offer and acceptance of the "WILSON POINTS" while both belligerents were under arms and free to contract. To force the substitution of the coalition Covenant for them, is to deprive America of all benefits from the war. To readjust the present differences in the society of nations, requires only the insistence by America of a return to that foundation and the addition of the superstructure which was developed along with the principles of those Points, in this Plan.

Not only should America do this for her own advantage, but to fulfill an obligation which she seems to have overlooked. It was the promise of the benefits to be gained under those Points that caused the people of the Central Powers to turn from their militarist leaders and put their trust in America and the Allies; and when they and the compensation clause were embodied in the offer for the ending of the war and that offer accepted, an agreement arose. America did not simply subscribe to a *voeu*, a desire, or simply to a convention, general neglect of which by the parties would relieve any particular one from performance, but entered into a two-sided contract under which

she became obligated *in solido* to see that the other side obtained its rights under the agreement. It is, therefore, America's duty to participate actively in the discharge of those obligations.

JUSTICE — NOT PREFERMENTS

PREFACE

To preconceive situations between nations that would arise, should given changes be introduced in their relationship, and then, to devise or apply rules, derived as much as possible from experience, that would be effective in controlling them, is a very strenuous mental task, when it is considered that, to be of value, all must conform to natural laws and to the motives of those concerned.

This plan represents an almost continuous study, by the writer, of the problems of international arbitration in the above manner, extending well over a period of thirty years, and marked, already in 1887, by an essay in competition for the Charles Sumner Prize at Harvard. Only by keeping tenaciously at the subject and being satisfied with an occasional inch of progress, has this argument reached its present proportions.

It has, too, necessarily been an almost solitary undertaking; for, during the early part of that period, while a number of persons talked and preached on the abolition of war, no one advanced anything like a comprehensive plan to accomplish that result; later, when the first Hague Conference was convoked, the subjects for consideration were restricted by the invitation; at the second Conference, there was no attempt made to go beyond certain limits, namely, a court of voluntary resort, with no plan for enforcing its decrees, and most of the attention continued to be given to the rules of war; and today, those who discuss it are found to be partisans of certain phases such as Conciliation, a Judicial Court, an International

Army, etc., at which points they stop; so that there are still very few who care to discuss the subject of a universal system in all of its aspects.

In the absence of the stimulus and aid of such discussions and the speedy elucidations that would often have followed, the writer has been obliged to depend chiefly upon an acquaintance with the various systems of municipal law and the precedents of international law, tested constantly by application to the events that have arisen in that period, for the foundations on which to base the features that have been adopted. The habits of a Wall Street lawyer in devising plans and drafting instruments with endless variations and constant relations with foreigners have, however, facilitated this work.

As these ideas have been developed and accumulated they have been set forth in pamphlets and addressed to persons who have expressed interest in the cause, but the time is now approaching when the subject will be of absorbing interest, and an arrangement of them in a more concise form is here undertaken.

The mainspring for so comprehensive a mechanism, the instrument for coercing nations, was developed from an inspiration had while listening to a lecture on the Continental Blocus, at a European University. Then followed the development of the other chief features of the plan: namely, compulsory arbitration; general disarmament; the recognition of the power of a few of the large nations to compel all others to enter the arrangement; a mode of convoking automatically executive bodies termed "extraordinary commissions;" the securing of impartial members for it; and the limiting of the powers of the latter.

At the beginning of the year 1892, the plan, through the instrumentality of MM. Jules Simon, several times the French Premier, Frederic Passy, for many years the leader in France in the cause of international arbitration, and Dr. Charles Richet, was recommended by *La Societe pour l'Arbitrage entre Nations*, to the International Peace Congress held at Berne, that year, where it was presented (*Bulletin du IV Congres de la Paix*, pages 70 and 208).

Subsequent to the first Conference of The Hague, the plan was modified, so as to conform to the establishment of the Court, by the substitution of Tribunals of the Members, for the "Extraordinary Commissions," and presented at the International Peace Congress, held at Rouen, in 1903 (*Bulletin du XII Congres Universel de la Paix*, pages 113 and 260).

From Rouen, the writer addressed copies of the official circular setting forth the proposition and beginning (*Quatre des Grandes Puissances, au moins*) (Four of the Great Powers, at least) to a number of persons, including Andrew Carnegie; and the following year, Mr. Carnegie first showed an interest in the cause of international arbitration by sending to the Boston International Peace Congress a letter from which the following is an extract:

> "Since we have at last in The Hague Tribunal a permanent High Court for the settlement of international disputes, more and more my thoughts turn upon the next possible and necessary step forward to an agreement by certain powers to prevent appeals to war by civilized nations.
>
> "Suppose, for instance, that Britain, France, Germany and America, with such other minor States as would certainly join them, were to take that position,

prepared, if defied, to enforce peaceful settlement, the first offender (if there ever were one) being rigorously dealt with, war would at one fell swoop be banished from the earth. For such a result, surely the people of those four countries would be willing to risk much. The risk, however, would be trifling. A strong combination would efface it altogether. I think this one simple plan most likely to commend itself to the intelligent masses. A committee might be formed to consider this. If a body of prominent men of each nation agreed to unite in urging the co-operation of their respective countries in the movement, I think the idea would soon spread."

(The Advocate of Peace, for December, 1904, page 233.)

Encouraged by this, the writer at Mr. Carnegie's request, submitted to him a paper prepared for publication in which the isolation feature was thus set forth:

"To shut off intercourse between two nations in dispute, would accomplish but little; as it would probably injure the nation asking for it as much as the offending nation, and raise the opposition of the merchants of the demanding country to overpowering proportions; but a decree, by an organized body representing all of the nations, whereby the offending nation would be cut off from intercourse with all others until it should comply, would be so drastic a force, that no nation would ever allow itself to be placed in such a position."

A copy was likewise sent to Mr. Justice Brewer and the appreciation of the idea can be seen by the use that they made of it. (See below, under "Indorsements.")

(The writer next suggested to Mr. Carnegie the desirability of inviting William T. Stead to America to aid the arbitration cause, which he did; and, in 1907, Mr. Stead appeared at the Carnegie Hall Congress and subsequently toured the country, inspired the people everywhere and started the formation of societies in all of the leading cities.)

In 1907, the writer arranged a number of these arguments, including those regarding the infeasibility of establishing courts with permanent judges, to be sent to the Delegations of the Several Nations at the Second Conference of The Hague and sent them (in a small blue book) only after obtaining the approval of the Department of State at Washington, as the American Delegation had begun to work for such an institution.. The result is mentioned further on; and, it is considered, fully sustains the position.

The impelling motive for such action was the belief, that time would only be wasted in the adoption of a system established on lines which, it was apparent from the outset, would lead but to disaster and only mislead Americans and all alike, in the belief that the matter had been definitely adjusted and that all could cease further efforts. Foremost along those lines was the introduction of a distinction in representation in a court having to do with matters of justice, based on the size of a nation, thereby opening the way in the society of nations for contentions analogous to those that have taken place among the peoples of all countries to achieve equal consideration, and which have given rise to *magna chartas*, revolutions, etc.

Furthermore, it was proposed that the jurisdiction of the courts should extend only to disputes such as would

never be the subject of a war: namely, those that the contestants would voluntarily submit to the court, for the nations were already arbitrating such cases, without a permanent court.

Little progress was made in the cause of international arbitration during the following eight or nine years, as the subject was looked upon as academic and utopian; but, from the spring of 1914, many practical men have interested themselves in it and not a few of the very ablest are in favor of the Isolation Plan.

New York, July, 1917.

THE ISOLATION*
(or non-intercourse)
PLAN

CLAIMS

The following claims are made for this plan;

1. It would be adaptable to all classes of cases.

2. It would not derogate from the sovereignty of any nation.

3. It would present the least possible opportunity for domination by any nation.

4. It would lend no encouragement to alliances between nations.

5. It would afford an absolute equality between large and small nations in matters of right.

6. The mode of constituting the (arbitral) courts is the most complete device to assure impartiality.

7. It would permit of the employment in the court of the most eminent minds of the day.

8. It would permit any number of arbitrations to proceed at one time, thereby obviating delays in reaching a cause on a calender.

9. It would be wholly scientific in that it would combine the essential features, and none but such.

10. The sanction would be the most drastic; and yet, not armed force.

11. The application of the sanction would not be directed toward the support of any side of the contention.

*The word Isolation was latterly adopted by the writer instead of "non-intercourse," as the latter does not permit of direct translation.

12. The function of the body that would administer it would simply be to establish a fact which should be determined in less than a day.

13. The punishment would be so severe, certain and thoroughly known in advance, that no nation would ever allow itself to arrive at a position where it would be condemned to undergo it.

14. General disarmament would afford the necessary assurance that dependence would be placed in the system, which dependence can never be established while any degree of armament is permitted, save, of course, for internal police purposes and the prevention of piracy on the seas.

15. It would necessitate practically no expense.

16. It would make war budgets unnecessary.

17. It would afford the only means for the nations to remain solvent after the great war and avoid internal turmoil.

18. Its adoption could be effected without any change to the organic or constitutional laws of the several nations.

19. General disarmament would accomplish the chief objectives of the opposing sides in the great war: the abolition of British navalism and German militarism: the only objects which can be worth the price of the war.

20. General disarmament would afford the only kind of a peace that would deserve the qualification "perpetual."

21. It could be introduced almost immediately; as a code of international law, which could only be worked out after years of conferring, — and so, might be dragged along until differences arose which would make the whole combination impossible — would not be a pre-requisite (although certain fundamental principles should be defined at the outset).

22. It combines also the means by which a few of the Great Powers could force all of the others to disarm and conform to the Convention.

Interdependence

One of the great effects of the war has been to render almost superfluous discussions which otherwise would have continued for years: for instance, those relating to the desirability of some judicial organization for the maintenance of international order, of some force more effective than moral sanction, or public opinion, back of it, and of general disarmament.

Even the advantages of war in fostering a virile race and in unsettling old institutions, whereby new and improved ones may take their places, are no longer upheld, so appalling have been the shocks which the sacrifices of life, health, morals, happiness and property have occasioned.

Attention will fortunately soon turn to the problems of reconstruction in a way that will abolish war.

Confidence, however, in treaties or conventions having for their object the establishment of peace, "perpetual peace," has been so shattered, that it is inconceivable that nations will again go through the form of preparing and executing another one, which, at the same time, will permit of the retention of armaments. No one would consider it genuine; but, should general disarmament be included, even the most incredulous could not fail to regard the instrument with a new respect, if not with a firm belief in its efficacy.

General disarmament, it is recognized, cannot be accomplished, unless there is an effective plan for settling all

disputes without war, and they must be introduced simultaneously.

Under this plan, it is maintained, general disarmament would be possible through the adoption of a compulsory court system (preferably arbitral courts, as explained hereafter); the strongest support conceivable for the courts would be the sanction of isolation; and general disarmament would be the condition that would give the high value to this sanction.

If, therefore, the start could be made with general disarmament, this sanction could be applied before any conflagration would get under way; as the least move of a nation to arm, especially were it in conflict with another, would constitute, in itself, a cause for arbitration, to be followed quickly by a decree of non-intercourse.

Under the present conditions, with arms at hand, recourse to them is the first thought when rights are invaded; because, when passion is aroused, the uncontrollable spirits wish immediately to hurl the most destructive weapon at their foe. Were arms not within reach, a sufficient vent for feelings would be found in marshalling the arguments for a deliberate test of right under rules of logic; and passion itself, at the very instant that it began to well up, would be turned off by the simple reflection that the matter was one to be settled by arbitration and award. Individuals in civilized countries now do this; and there is no reason why nations should not conform to the same practice.

[In order to avoid repetition of the arguments and permit of the grouping of them under their respective heads for convenience in reference, the relationship of the

several features of the plan will not be pursued further at this point.]

The Tribunal

No compulsory system of law is conceivable without an executive power vested in some one. It is to be assumed, too, that the nations are not ready to divest themselves of a portion of their sovereignty by placing it in the hands of a World Emperor, or even a World President. If it were suggested that it be reposed in a joint committee, the same objection would apply. Fortunately, the executive duties under the present plan would be so reduced that they could be performed efficiently by a body of such restricted authority, limited to such a short term of service and constituted with so little concern for the persons who would compose it, that the thought of superiority in connection with the office would hardly enter the mind.

Its functions might be limited to inquiries of three descriptions, namely: (1) The refusal of a nation to arbitrate; (2) The refusal of a nation to comply with the decision of a court of arbitration; and (3) The commission of fraud by an arbitrator. Should an affirmative verdict be found in either the first or second of these cases, it would decree that all intercourse should cease between the offending nation and all others, would publish the decree and maintain it until the nation complied. In the third case, it would try the question of fraud only, and, should it find in the affirmative, it would order a retrial before a new board of arbitration.

This body should undoubtedly be the Court at The Hague, acting through a Tribunal composed of a limited number of the Members other than those who had acted

as arbitrators and nationals of the countries involved in the contest, who might be chosen by striking off names from the entire Roll in rotation, in the order in which the nations interested had entered their appearances in the proceedings at the Court.

This body would have no competency to entertain the questions in dispute; the fact to be established would require no lengthy session, possibly but a short sitting; no special fund would be required to execute the decree; and no nation would be obliged to amend its constitution, or organic law, to permit it to conform with the requirements of the decree.

(Regarding the composition of The Court of The Hague, see below, under Sovereignty.)

Arbitration

The institution of arbitration is *taken from experience;* it is the only course that has been followed where international differences have been adjudicated; many instances of such action are now recorded; and it has given general satisfaction. Almost never has there been a failure in compliance with an award.

Mr. Leon Bourgeois, the head of the French Delegation to the Second Conference of The Hague, reporting for the Committee on the plan for the establishment of a judicial court, nevertheless first stated (italicized by the writer):

> "If there are at present no judges at The Hague, it is because the Conference of 1899, taking into consideration the whole field open to arbitration, intended to leave to the parties the duty of choosing their judges, *which choice is essential in all cases of peculiar gravity.* We should not like to see the court

created in 1899 lose its essential character, and *we intend to preserve this freedom in the choice* of judges in all cases where no other rule is provided.

"In *controversies of a political nature*, especially, we think that this way *will always be the rule of arbitration* and that no nation, large or small, will consent to go before a court of arbitration unless it takes an active part in the appointment of the members composing it."

In fact, it has been generally recognized in the Hague Conventions that it does not concern outside parties how nations settle their differences, if only it is done without using physical violence. One way of deciding may be considered preferable to another, and as long as all nations concerned in the matter agree, any plan can be followed; but, in order to place a nation that refused to proceed in default, it would be necessary to have *one formula* with the successive steps prescribed, so that the prosecuting nation could show full compliance on its part and clearly establish the default upon the part of its adversary.

In order that the refusing nation might have no just complaint to make of the personnel of the commission to which it is proposed to submit the cause, a plan for the selection of the arbitrators should be adopted which would guarantee the greatest freedom from objection that is conceivable. This requirement would probably be met by the provision that the nations that had appeared in the case at the office of the Clerk of the Court of The Hague, when less than five, might proceed, in rotation, in the order in which they had appeared, to eliminate the names from The Roll of the Members of the Court, of which each nation under the First Convention of The Hague already

has the right to name four, and the impartial members of the commission would be the three or five Members able to attend, whose names would be last stricken from The Roll; or, where five or more nations had appeared, each might nominate a certain number of persons as a panel; and, after the lapse of an interval of time in order to afford the other nations a sufficient opportunity to examine into the character and known sentiments of the persons proposed, continue by striking out in the above manner.

If some nations succeeded thereby in having one more chance to strike out than others, it would be due to their greater promptness in appearing; and the privilege, therefore, would be equally open to all.

The limitation to Members of The Court when less than five nations had appeared in a case, would, in a way, add to the dignity of the office of a Member; but, it would often drive the nations to select the arbitrators themselves, rather than to run the chance of submitting to an arbitration commission composed of the Members remaining after their opponents had had the opportunity of eliminating a considerable number of them. Were more than five nations parties to the contention, it could hardly be expected that they would agree on a selection; and a larger and open panel would afford a compensation.

A Judicial Court

The strongest contention made by the advocates of a Court with a permanent personnel is probably that contained in the instructions of the Secretary of State to the American Delegates to the Second Conference of the Hague:

"It has been a very general practice for arbitrators to act, not as judges deciding questions of fact and law upon the record before them under a sense of judicial responsibility, but as negotiators effecting settlements of the questions brought before them in accordance with the traditions and usages and subject to all the considerations and influences which affect diplomatic agents. The two methods are radically different, proceed upon different standards of honorable obligation, and frequently lead to widely different results."

In concluding he advocated:

"* * * a permanent tribunal composed of judges who are judicial officers and nothing less * * * and who will devote their entire time to the trial and decision of international causes by judicial methods and under a sense of judicial responsibility."

This might well apply in comparing the early practice of submitting questions to some monarch who had never achieved distinction as a jurist; but wrongfully assumes, that arbitrators would not, as a rule, or even when intricate questions of a legal nature were involved, be selected from persons of legal training, or accustomed to legal methods, or possessed of a realization of the duties of arbitrators.

It can well be said, moreover, that very few of the causes that would reach a court of arbitration would be of a strictly legal nature; and that were such questions presented, it would not be probable that no jurists would be found in the Commission, or that the legal principles bear-

ing on the case would be so uncertain in their nature that the jurists and advocates before the court could not as a rule make clear their application, especially as the decisions would be "reasoned" (*motivees*). It is apparent that the above instructions were based on a familiarity with only one system of law; and that, the most antiquated and artificial practiced by advanced nations, in which half of the cases are decided on technicalities, and not on the merits, and as though it were supposed that an international court would master and apply all of these intricacies. If that is the aim, it will be fortunate should we proceed no further toward it. The perfection and simplicity of the civil law procedure commend it so strongly that there is but little doubt but that its principles will guide in international proceedings; unless, perhaps, in cases in which both parties are accustomed to the English system.

It was the attempt to adopt a plan for a *judicial court* (of permanent judges), notwithstanding the provision that its jurisdiction was only to have been optional, that proved to be the stumbling block in the effort made at The Second Conference of The Hague to create a permanent court. The Conference could not overcome the opposition of the smaller nations, to suggestions that they should not have equal representation in the tribunal, and they were further embittered by proposals of the larger ones to constitute the court without them. It was obliged to adjourn after recommending that the tribunal be established, "when the nations should agree upon a method of appointing the judges." This, of course, begged the whole question; and no such tribunal has come into existence.

The head of the American Delegation stated before the Commission charged with the consideration of the subject:

"It matters little to me whether my nation may have a judge or not," but it will be noted, that he was not speaking for his nation, or even for his Delegation.

He further presented the following, which appeared to be a very plausible plan:

> "Article One. Every signatory power shall have the privilege of appointing a judge and an assistant qualified for and disposed to accept such positions and to transmit the names to the international bureau.
>
> Article Two. The bureau, that being the case, shall make a list of all the proposed judges and assistants, with indication of the nations proposing them, and shall transmit it to all the signatory powers.
>
> Article 3rd. Each signatory power shall signify to the bureau which one of the judges and assistants thus named it chooses, each nation voting for fifteen judges and fifteen assistants at the same time.
>
> Article 4th. The bureau, on receiving the list thus voted for, shall make out a list of the names of the fifteen judges and of the fifteen assistants having received the greatest number of votes.
>
> Article 5th. In the case of an equality of votes affecting the election of the fifteen judges and the fifteen assistants, the choice between them shall be by a drawing by lot made by the bureau.
>
> Article 6th. In case of vacancy arising in a position of judge or of assistant, the vacancy shall be filled by the nation to which the judge or assistant belonged."

Such a plan might furnish the numerous small nations such an opportunity to score some day against the few great powers, that the latter might not wish to run the risk

and it might be difficult, for this reason, to secure the ratification and adhesion of any such nation to it.

It might be said in opposition to this, that such a Convention could be accepted with safety, for a nation could always escape, as submission to the jurisdiction of the court was optional in each instance.

Legislation, or its equivalent, treaty or convention making, of such a character, although not without precedent, is to be deprecated, however, as it is not real, and attempts by the nations to deceive themselves are not acts of intelligence.

Such a court would require a calendar and delays of years in reaching causes might very soon result, as sometimes a single one would consume many months.

From the fact that all international differences would be submitted to this body composed of a few men, the attitude would inevitably result that it was higher than any other world organization; and, because of its powers, rulers would neglect no opportunity to show deference to its members.

It would be responsible to no power, unless to conventions, perhaps periodic; it could count upon exercising almost any act of discretion, without further comment than the creation of some convention which would provide a different rule for future cases; and it could rest assured that the nations could not act in such harmony as to operate anything like a recall of its members.

It would, from these causes, always tend toward arrogancy; for no situation could be presented to human frality with greater elevation from ordinary positions of life and fewer restraints in the exercise of power.

(See also, below, under The United States Supreme Court as a Model.)

The Arbitration and Court Systems Compared

The following are some of the objections to the Court system and advantages of the commission system:

Over forty nations would wish to adhere to the Convention to be adopted and, unless the principle of inequality in representation should be established, which would not be probable, each nation would expect at least one representative on the bench of that court. This would necessitate, either the creation of a body of judges, which, if all were to sit at a time, would be so large, that it would be liable to be swayed by the eloquence of the adovcates before it and even of its own members, rather than to be governed by quiet deliberation; or, the division of the court into smaller groups, or *senats*, in which case dissatisfaction in the apportionment would be inevitable.

The expense of the maintenance of a court of such size would doubtless rise to a figure out of all proportion with the importance of the cases that would be submitted to it.

If only the great powers were to present members, the smaller ones would be dissatisfied; and, if all were given that right in turn, complaint would often be made that the members presented were not men of such world-wide experience as would qualify them to assume such positions.

For instance, maritime matters might arise, and the majority of the members of the court at a given time might be from countries that had practically no modern marine experience.

No nation would like to present causes to a court in which it would regularly find one or more persons, who,

it supposed, were inimical to it; and, even should the privilege of refusing judges be given, it would not like to be called upon to exercise that privilege regularly against any member.

The position of the judges could not be that of such indifference as to the parties before them as is that, for instance, of the Justices of the United States Supreme Court, who usually see before them simply unknown individuals. Only nations, some forty in number, would appear before the international court, and it could not be expected but that the judges in time would acquire a leaning toward some and away from others.

They would probably live together at the Hague, or some small European capital; they would be dependent largely upon their own society for mental recreation, and no nation would feel that it would be fair to be obliged to submit to a tribunal in which its adversary had a representative on the bench and it had none; or, even if he were not to sit, to a set of judges who had been associating for four or six years with such representative and had probably had their ideas colored by his remarks. International disputes develop gradually as a rule; they become subjects of general intelligence, such that the members of the court could not remain in ignorance of them, and casual remarks at opportune moments can do much in shaping opinion.

The most competent men, if such competency is to be measured by an intimate experience with affairs such as those that would be drawn into question, could be had to sit in a case the duration of which could be approximated in advance; whereas men, unless they had passed the height of their professional activities, would not alter their careers, separate themselves from their countries and locate

at The Hague to await the uncertain business that would be brought there.

The word "uncertain" is used for the reason, that, even should a court of permanent judges be established, there can be little doubt but that any future Convention would contain the exception, already introduced in The Hague Conventions, permitting, in important cases, the choice of judges in other ways, by which men could be obtained more expert in the matter or in the impartiality of whose sentiments more confidence might be felt; and only minor causes would go to the regular judges.

The selection from the world at large could be adequately safeguarded through the compilation by each nation, or generally, of biographies of the Members of the Court and other persons eligible to sit as arbitrators, giving not only their accomplishments, but the sentiments expressed in their writings and otherwise; so that, when a nation presented a name, each other nation interested in the controversy could judge at once whether it could expect the competency and impartiality that it sought, and guide itself accordingly in retaining or striking off the name from the panel.

On the other hand, this scrutiny into the careers of such men would serve to prompt them to act with the greatest judgment and impartiality of which they were capable, for the world could afford no higher honor to a man than to call him repeatedly to fulfill such a function.

The commission system would also do away with the useless delays in waiting for a case to be reached upon the calendar, for a nation might institute commissions for the hearing of any number of causes at a time.

Arbitration commissions readily permit the presence

among the commissioners of nationals of the countries in dispute and this feature is well worth consideration, before discarding the practice. The functions of the nationals, however, should not include the right to vote, unless the number were such that they could not change the vote of the impartial members, but should be essentially consultative. In this capacity they can be of great use in the deliberations by preventing the oversight of contentions of their countries, which fact becomes obvious when there is no provision for appeal.

When a body of men is given the task of determining a question, it is usually undertaken by a process of elimination; and a plausible leader can often so pass over a point as to quickly dismiss it from further consideration. It may be that its importance becomes most apparant in connection with some point which will come up later, but having been already considered and dismissed, only an interested party will stem the current of impatience at its recall, and persist with it. Could each nation be permitted to have present at all conferences, one or more of its strongest and best informed men on the subject, questions would be apt to be determined only after the last doubt had been set at rest.

The fact, too, that were the judges permanent, the appointments would invariably be made from the foremost men of each nation, which would mean from men who had then reached the height of their careers, and perhaps who had already retired from active life, would signify that in a few years age would begin to weigh upon them and they would cease to keep thoroughly in touch with the conditions of the times. If matters were of great moment, the nations concerned would wish the entire court to be com-

posed of the strongest men of the day and often likewise of those most familiar with the general subject of the contention, that were available. This is the chief reason why all of the plans thus far adopted by the Conferences of The Hague have left open the option of choosing judges in other ways.

Inspired by the success in adopting a plan, though still unratified, for the International Prize Court, in 1909, at London, providing that each of the eight great maritime powers should be represented in the court by a member to sit for six years, and the remaining thirty some nations by seven members, to be designated in rotation, efforts are still being made to organize a permanent tribunal to be called the High Court of Justice in which the great powers will have a similar preponderance.

The success of the first undertaking is, however, in no way to be used as a guide in the second. Most of the smaller nations had no navies worthy of the name, hardly expected to have a prize case, and refrained from opposition, not so much because they were indifferent as to what was done, but because they felt that it would be about as impertinent as useless to interfere. When a plan for a court for the determination of differences in general, however, is presented, they are interested and maintain that, large or small, the established unit in international intercourse is an independent nation; and, while the smaller admit that politically they are not equals of the larger, they maintain that there can be no distinction because of size in determining rights; that their rights are as dear to them as are those of a larger nation to it; and that they should be protected by the same rules of impartiality.

Few nations, beyond those that would be preferred,

would accept this plan. If it were thrust upon them, they would probably be obliged to submit to it, but it constitutes one of those matters that will never be settled until rightly settled, and it is unfortunate that it has been introduced when the necessity for it did not exist.

Attention is called to the fact that this idea of inequality in the make-up of the deciding body is a departure from the practice that had been established in international arbitrations. It had never been considered necessary that larger countries should have greater weight in the court. The principle of national equality in judicial matters was furthermore assumed as the only natural one throughout the First Conference of the Hague, and until the Second was well started.

The confidence that the smaller states were enjoying in the fact that the larger ones were recognizing that equality was complete, and constituted one of the fundamental assurances without which a plan involving the surrender by the nations of their customary mode of self-protection could not be realized.

Appeals

Thus far in arbitrations, the necessity of an appellate jurisdiction has not appeared, and there is little reason for its existence. While it is true that courts of higher jurisdiction are not constituted for the purpose of thrashing out the crude masses of litigation that come to the courts of the first instance; that the power of passing upon, and reversing, the decisions of the judges of the lower courts, and of representing a larger territorial jurisdiction, are greater honors, and that the men who are chosen to sit in them are esteemed to be of higher legal attainments, so

that these inducements might suffice to determine men of eminence to accept the positions when they would not care to sit in a court of first instance, as above considered under. A Judicial Court, nevertheless, under the present plan, by which the highest talent could be secured for the arbitration court, a nation should be satisfied with a single decision. It would only be following the example of the English, in confiding their most vital interest, that of passing upon life, to the court of first instance. Permeated with the feeling that the success of the system would depend upon the fairness of the decisions, the arbitrators would have an almost equal incentive to do all that human wisdom could, to give satisfaction.

However, should, by rare chance, some cardinal principle of international right be so disregarded that the precedent might be considered by the nations as a general menace, it would be quite possible for a group of nations to induce the nation in whose favor the decision had been made, to renounce that part of the award, or accept some compensatory satisfaction.

Expense of Appeals

The late Mr. Cramer expressed the opinion at the Boston Congress, that the expense of assembling a Court at The Hague was so great that an amendment to submit cases to Boards of Arbitration in the first instance, and to the Court of The Hague on Appeal, should be made, in order to relieve the smaller countries of such a forbidding condition. Against this argument, and in addition to the reason already given, consideration should not be lost of the fact that the wealthy countries, when not satisfied, would invariably take a second chance, just as wealthy

litigants do in municipal cases, and the small nations would find litigation still more burdensome.

The Sanction of Isolation, or Non-Intercourse

The facts that, in international relations, it is the nation that is the delinquent and that the nations are already segregated, are the conditions that make possible this sanction.

It is, in its essence, the only plan of punishment that has survived the test of time, where the individual is the offender: namely, imprisonment; and would be much more effective should the application be against a nation, rather than an individual.

When the offender is an individual, he must be kept on the territory of the government inflicting the punishment, and must, at the latter's expense, be sheltered, nourished and closely confined.

While the idea of imprisoning a whole nation, at first thought, may seem grotesque, for the cost of apprehending and convicting a single wrongdoer has not infrequently embarrassed a whole county financially, the means for doing it are so simple that the cost would be almost inconsiderable. In fact, it would be self-reacting, like *jiu jitsu*, as the offending nation would almost imprison itself.

Were a nation to be imprisoned, it would be done upon its own territory and without expense for keeping and guarding.

Should its territory be insufficient for self-maintenance, no question of sympathy would arise, as it would have brought the imprisonment upon itself voluntarily and

could terminate it at any time upon complying with the decree.

The nation in default would simply be refused an entrance to the territories of other nations, did it make the attempt to disregard the decree.

Suppose that the condemned nation did send even a fleet of merchantmen to an unprotected port of another nation with the intention of engaging in trade. Imagine its predicament, upon realizing that no person would be allowed to deal, or even to communicate, with it!

Being allowed to retain defenses on its territory, every nation, at small expense and without much provision, could ward off even an invasion, should the condemned nation be so misguided as to attempt it, without having taken years of time to prepare for it, and such preparation could always be effectively forestalled by proceeding against it under the present plan, the moment that it was suspected that the nation was making a start to arm.

Were the plan that simply intercourse between the nations in conflict should stop, no decisive result could be expected as each would have the rest of the world with which to deal and as the nationals of each country whose business would be disturbed would influence their respective governments as much as they could against the measure, and thus render it ineffective. However, were it the joint action of all the nations, the result would be such a tremendous loss to the nation or few nations thus cut off, that the latter would almost certainly comply. It can well be said to be the greatest force of the kind conceivable; for, while it would be working ruin within the nation at fault by cutting off its supply of raw materials and its international intercourse, the proceeding would not be

costing its opponent but, it may be, some loss of trade with the nation isolated, as the opponent would still have all of the other countries with which to deal.

As increased armament gives an increased sense of security in and dependence upon that form of protection, so, on the other hand, a decrease weakens such confidence; and, in a corresponding degree, as it falls off, the effectiveness of this sanction without physical or armed force, increases.

The greatest virtue of the Isolation Plan, therefore, would appear when the absence of armament was complete.

Its effectiveness, moreover, is not to be measured by what the belligerent nations in the present war are willing to endure, now that they are angered to the point where they will suffer to almost any extreme rather than to consider possible terms for a cessation of the war, but by what they would determine before reaching that state of mind as to whether they would be warranted in facing the barrier of Isolation set up to keep them from war, rather than to attempt to settle the matter otherwise.

The facts to be established by the Tribunal before inflicting the decree, being dissociated from the questions in contest, and being simply a matter of procedure under the Convention, non-compliance would be a breach of the Convention[1] and would hardly elicit sympathy from other nations, as the latter would consider, that being obligated themselves, it behooved the delinquent to fulfill the obligation on its part.

It presents but one inflexible form of punishment, the

[1]Mr. Balfour, on July 30th, at San Sabastian, is reported to have stated: "We must have an economic blockade * * * to apply against a nation which defies the League."

extent and severity of which can be well comprehended; and the duration being only commensurate with the offense, assurance would be had in the certainty of its application.

It is probable that its application would never be made, but that it would simply stand as a possible last resort.

Distinctions

The prototype of this sanction is found in the Continental blockade, especially as it was applied on the Napoleonic side, through the warding off of the British at the line of the Continent by the land forces; but this plan contemplates three great distinctions in its applications:

(1) Its imposition would be systematically and scientifically administered by a body as nearly impartial as could be devised, composed largely of the choice of the offending nation, unless it refused to act, and only after the latter had had an opportunity to be heard.

(2) Its imposition would be made at a time when the offending nation was impotent as to armed force.

(3) It would be backed by a moral solidarity.

As to its effectiveness, no comparison can be made. The Continental Blocus was not attempted until the war had assumed its full proportions and was little more than the extension of the ancient practice of cutting off the enemy by siege. Because of the fact that the opposing forces were almost equal, the attempt to apply it at the time that it was done was about as hopeless as would be that to stop some great conflagration in the midst of its course with water; and yet water would suffice, if applied

before much progress had been made. The necessary co-operation, too, was lacking, as it was never doubted by the nations in combination with Napoleon, that his efforts were not primarily for his own aggrandizement.

It has been seen in the present war how serious the effect of shutting off supplies from a nation can be, even when the latter is mightily armed at the start,

It is to be distinguished from a boycott, in that it would be imposed by an impartial body, only after the nation against which it was directed had had an opportunity to be heard, while the boycott is always applied *ex parte*.

Indorsements of the Isolation Plan

Two of the strongest endorsements, now too many to present, are the following:

The late Justice Brewer stated:

> "Now, if the nations in the coming conference at "The Hague, or in coming conferences, shall agree that "any nation which refuses to enter into arbitration "with a nation with which it has a dispute, or which "refuses to abide by the award of the arbitrators "selected in accordance with the provisions of The "Hague Convention, or some other convention, shall "be isolated from all intercourse with and recognition "by any other nation on the face of the earth, can "you imagine any compulsion which would be more "real and peremptory than that?"
>
> * * * "there is no nation, however mighty, "that could endure such an isolation, such an out-"lawry as that would be. The business interests of "the nation would compel the government to recede

"from its position and no longer remain an outlaw on "the face of the globe."

"Such a procedure would involve no military force, "no bloodshed on the part of the other nations. * * " * The very fact that it was outlawed would "place it in a position where it would have to submit; "it would be compulsion, as real as the compulsion "of a marshal with a writ in his hands." (Report of the Eleventh Annual Meeting of the Mohonk Lake Conference on International Arbitration [1905], p. 38.)

Mr. Carnegie has expressed himself as follows regarding this plan:

"Five nations co-operated in quelling the recent "Chinese disorders and rescuing their representatives "in Pekin. It is perfectly clear that these five nations "could banish war. Suppose even three of them "formed a League of peace,—inviting all other "nations to join—and agreed that since war in any "part of the civilized world affects all nations, and "often seriously, that no nation shall go to war, but "shall refer International disputes to the Hague "Conference or other arbitral body for peaceful settle- "ment, the League agreeing to declare non-inter- "course with any nation refusing compliance. Imag- "ine a nation cut off today from the world."

"The relations between Britain, France and the "United States today are so close, their aims so simi- "lar, their territories and fields of operation so clearly "defined and so different that these Powers might "properly unite in inviting other nations to consider "the question of such a League as has been sketched. "It is a subject well worthy the attention of their

"rulers, for of all the modes of hastening the end of "war this appears the easiest and the best." * * * "it is none the less gratifying to know that there is in "reserve a drastic mode of enforcement, if needed, "which would promptly banish war." (A Rectoral Address delivered to the Students in the University of St. Andrews, 17th of October, 1905, by Andrew Carnegie, Esq., LL. D.)

No Americans have been better qualified to express opinions upon this subject: the one, knowing so intimately the effectiveness of combinations; the other, having had experience as an arbitrator; and both possessed of such a wide acquaintanceship with foreigners, and having given so much study to the subject.

The weight of these opinions should establish the superiority of this plan in the judgment of all, until it can be shown to be defective.

Partial Disarmament, as Long as the Right to Wage War is Recognized, an Impossibility

Were the situations of all nations equal in geographical position, in area, in population, in colonial development, in commercial advantage and in every other respect, the proposition might be maintainable; but how could it be expected, that Great Britain would reduce her navy to the size of that of any other power, when her possessions, much more extensive than her home territory, lie in all of the seas? How would America consider a proposition to limit her naval force to that of France or of Japan, when she is open to attack on one ocean by the one and on another ocean by the other? If America were given a double allotment because of this fact, Germany would

claim like treatment because of the scattered position of her colonial trade. Because of having practically but a single naval base, even a much smaller navy might give Japan an equal amount of protection, but she would insist upon a full quota.

Again America, in addition to her great seaboards on two wide-spreading oceans, has her distant possessions to protect. Should she again engage in war, it would not be improbable that she would again be opposed to the power which has twice imperilled her in the past, its great colony to the north and its ally, the new naval power in the Orient.

She could not agree to arrest further development with the possibility of being exposed some day to attack by such a united force, for in a such case, the abandonment of her possessions and the division of her forces along the Atlantic and Pacific coasts would become imperative and the consequences ineluctable.

Suppose that America did, in principle, agree to such a plan. How could a percentage of reduction be arranged that would be acceptable to America, when the navy of Great Britain is so much greater than that of America, and yet the latter has outstripped her in resources? If war is to continue as the arbiter of disputes, those nations whose resources are still plentiful will continue preparations, so that they may win from any possible adversary. They will not consent to confine themselves to a limited force, but will expect to employ, if necessary, their last man and last dollar of credit. Anything else would be simply to allow the dispute to be decided by a duel. Intelligence is far too advanced to revert to such processes of barbarism. The attempt is now to replace might by intelligent judgment, such as comports with our civilization.

But even suppose that a protocol were arranged recognizing that differences, when important, might continue to be determined by war and that America might arm to a certain limit only. Could it be expected that its ratification would be accomplished?

Would it be reasonable that the country of the greatest material resources should deliberately place itself in so disadvantageous a position? What would it gain thereby? At the most, it would be the reduction of the naval budget; but that is still so inconsiderable that there is no outcry against it.

As humanity is constituted, it could not be expected that a nation, because bound by a treaty, would refrain from further arming itself, should it perceive that it was about to be drawn into a war, its territory invaded and its property destroyed, while it still had abundant resources, for no interior force could thereafter repress such activities.

The law of self-preservation is still that of the masses and some excuse, probably based upon some peculiar disadvantage in the way in which the nation would be affected by such a convention, would be pleaded as a justification for a breach. To permit a nation to enter into such an agreement would hardly be honorable.

Finally, the suspicion under which each nation would be held by the others that it was exceeding the limit, would constantly give rise to charges of deception, even were very broad opportunities for inspection afforded.

The writer contends, that no conceivable proposition based on the limitation of armament, or partial disarmament, can ever reach the status of an agreement; and

even were such an agreement made, it would be of no value, as no dependence would be placed upon it.

If these reasons are good, it results that the situation must remain as it is with an unlimited right to arm, or that disarmament must be general (save always for internal police purposes and the prevention of piracy on the seas).

Non-Justiciable Cases

National Honor

Mr. Carnegie, in the address quoted elsewhere, made use of an old and almost forgotten truth that should clear away the barrier to the submission of causes to arbitration, or judicial decision, on the ground that they involve national honor, namely:

"Never did man or nation dishonor another man or nation. That is impossible. All honor's wounds are self-inflicted. All stains upon honor come from within, never from without."

The writer maintains that the sentiment regarding honor, is simply a false attitude that disappears as civilization advances.

In the early years of the American Republic it still obtained regarding personal honor, but it seems to have met its death blow when one of its most respected and beloved citizens fell by the bullet of one of unfavorable repute, and public opinion caused the latter to be abandoned to a miserable existence for the rest of his life; so, that, in the more advanced parts of the country, but few cases of the kind are recorded.

Public opinion is such that the individual feels that he would debase himself did he make a statement of another

derogative of character, unless it were well founded, and he guards himself from it; should he do so by mistake, he would be ready to humiliate himself by acknowledging his error and seeking to make reparation; while, on the other hand, were the statement true, the same public opinion would prevent the party affected from making any remonstrance.

Nations are subject to the same pressure of public opinion.

Vital Interests

The society of nations is so large and intelligence so widespread, that what can be termed "vital interests" are the interests common to all, or at least to the most progressive; and their solidarity under a world-wide convention can be depended on to uphold all such pretentions as are reasonable. It surely could not be maintained, that the safe-guarding of those that were unreasonable is so important, that it should prevent the general disarmament of the nations and thereby preclude the security of the whole which that condition would afford.

Almost the only concrete example which Americans offer under this head, is the Monroe Doctrine.

It must, however, be conceded, that the gravamen of this Doctrine is the fear that some military base may be established by some European power on the Western Continent to threaten the peace and security of the latter. Should general disarmament be introduced, however, that fear would be removed.

America has long welcomed immigrants from Europe and speedily incorporated them into the nation on equal

terms with its older citizens; and especially is this the case with those from the very powers that might establish such bases; so why, under general disarmament, should she not welcome their coming to neighboring territory?

Reliance on the mother country for military aid is the chief motive that has given to those unions their strength; but, under general disarmament, only sentiment would remain; and the attachment would endure only so long as advantageous commercial relationships would continue, which would be a very healthy situation for the development of the country by such colonists.

Territorial Integrity

The recognition by the Convention of only independent states and the treatment of them as equals in their international relationship, disposes of the question of territorial integrity in all cases in which delimitations have been established. Where they have not been, the questions might well be left for arbitration.

The Least Possible Derogation from National Sovereignty

This plan is formed on the basis, that the nation that is governed the least, is governed the best; and therefore represents the minimum of federation necessary for its effectiveness.

The organization of international bodies, means the surrender by the individual States of certain powers now exercised by them singly. It has been proposed in furtherance of the various ideas for the federation of the World, to have, not only a permanent court with a fixed personnel and a legislative body to make international laws, but an

international executive to enforce the laws, possibly by the aid of an international army.

Such a plan would infringe upon the prerogatives of at least every national legislative body and of every sovereign. Is it not well, therefore, before a discussion of its arrangement is provoked, to examine into the necessity for such an organization? Those born and reared in America have probably had instilled into them a keener appreciation than other peoples of the greatness of the struggles over the surrender of such rights, although limited. At the outset, the erection of the Constitution of the United States was accomplished only at a time when the Articles of Confederation and the Continental Government had proven to be inefficient and the States were impelled to such action to preserve the Union. The contentions between the federalist and democratic (centralization and decentralization) factions are still reflected each year in the decisions of the Supreme Court.

It will be remembered also that the heads of the several States held only elective offices. By what means, then, is it supposed that, when no such exigency exists, the States of the World are going to cede even more substantial rights to this body or that their sovereigns are going to resign a portion of their hereditary power to a Mr. X, or a Mr. Y?

Consider, too, the surrender that even the erection of a court of permanent judges would entail (see above, under Judicial Court, page 12), and no consideration is given there to the enforcement of its decrees.

Why should the cause of arbitration and disarmament be jeopardized by reason of the antagonisms that such a discussion would arouse?

To accomplish all that is necessary, only the minimum of organization would be required: no more, it might be said, than what at present exists under the Convention of The Hague.

Under it, each of the signatory powers has the right to name four Members of the Court, which most of them have done. The latter have no powers, however, but depend for such upon the grant thereof in the *compromis*, or treaty, by which provision may be made for their ministry, in the same manner as would be that of any other individual who might be chosen. It is already in operation under an ample provision for its small expenses through joint contributions by the States.

Then, under Article 28, the provision is made:

> "A Permanent Administrative Counsel, composed of the diplomatic representatives of the Signatory Powers accredited to The Hague and of the Minister of Foreign Affairs of the Netherlands, who shall fulfill the functions of President, shall be constituted in that City," etc.

As its functions are simply to keep up the organization and administer the property, no fear can be aroused by the powers delegated to it or any of its members.

With this very simple organization, all that remains to be done is to obligate nations to arbitrate their differences, when they cannot settle them otherwise; if they cannot agree upon the arbitrators, to select them according to an accepted plan, supposed to afford a choice of impartial persons; and finally, to conform to the award rendered.

To do this, it would not always be necessary that the disputing nations even place themselves in contact with

the Court of The Hague, although it might be expedient that notifications to arbitrate and other processes be served by it for the purpose of registration and ultimate disposition, upon the failure to proceed amicably.

The Court then would only be called upon to act as set forth above, under Tribunal.

It would not be necessary that the hundred and some members should assemble or that the President of the Permanent Administrative Council should take part in the case, and the Convention already provides for the formation of Tribunals, or small working bodies of its Members, though not for the functions set forth under this plan.

This organization would be complete; and yet it might be said even that it involved no surrender of sovereign rights, as it would only deal with disputes between independent nations and no government or individual has ever established a prerogative to pass upon such questions. If there should be an encroachment on such rights, it would be in compelling each nation to put aside the instruments of war intended for use on the other nations, for which a little compulsion might be necessary, although it would never provoke more than a protest.

No nation has the sovereign right to use arms beyond its territorial limits. To use them elsewhere, implies, therefore, that some other sovereignty is being invaded; or, that it is upon common territory, such as the open sea, where other nations have an equal right; and, under a system of general disarmament, the international right of freeing all nations from the menace of armed attack would be paramount as a police regulation.

In order that the minimum of power be delegated to the Members, who are the only permanent officers required,

no Tribunal should ever be empowered to pass upon the merits of a dispute.

It will be seen that, while the highest rights might be presented for determination under this plan, no individual, or group of individuals, could be permanently exalted by it.

The League to Enforce Peace

The League to Enforce Peace, launched by a number of prominent citizens, at Independence Hall, in Philadelphia, on June 17, 1915, at a session lasting a little more than a day, is a combination plan, based largely on the plan for the proposed general arbitration treaties between America, Great Britain and France, signed on August 3, 1911, but never ratified, with an adaptation of the isolation idea, economic and military forces, which was brought forth a short time previous, at a meeting, styled The World's Court Congress, held at Cleveland, Ohio.

The proposals were set forth in four short paragraphs: the first, providing that all, so-called, justiciable questions should be submitted to a judicial tribunal, which should also have the competency to determine whether it had jurisdiction; the second, that all other questions should be submitted to a council of conciliation, for hearing, consideration and recommendation; the third (in full):

> "The signatory powers shall jointly use forthwith both their economic and military forces against any one of their number that goes to war or commits acts of hostility against another of the signatories before any question arising shall be submitted as provided in the foregoing";

and the fourth, for conferences to codify rules of international law.

Subsequently, its Executive Committee authorized the provision, that the joint use of their military forces should follow that of their economic forces, due to the fact, that The Chamber of Commerce of The United States had, in the meantime, adopted similar resolutions with the specification, that military force should follow "commercial and financial non-intercourse." Much opposition was made in the latter body, however, to the recommendation of the use of military force; and a referendum to the Chambers throughout the country, having been had, it failed to adopt the plan.

A circular was issued from the headquarters of The League, prepared by Samuel J. Elder, Esq., as its leaders were doubting whether Congress could be made to act under such an agreement, which stated:

> "In case of violation by any of the signatory powers, war can be declared only by Congress as provided in the Constitution. The nations are not to bind themselves to contibute quotas to any international police, but will establish such armament, and such armament only, as each may determine upon and such as they would maintain in any event."

Many criticisms followed; its prime mover, in The Atlantic Monthly, for September, following, stated: "The plan for a League to Enforce Peace is by no means perfect in conception, and still less in its provisions;" and The League has finally taken refuge in the announcement, that the propositions were not put forth as a complete plans but as a basis for discussion; as, of course, all question, must be decided by the official conference which will be called to establish the convention. The League, neverthe-

less, has large funds and is continuing to further its plan as above outlined.

The following are some of the objections to the plan of The League:

(1) The plan does not pretend to supply a substitute for war; or even to avert it, further than to force the nations to halt until the matter has been submitted to (and passed upon by), one of the Courts for which it provides. Its advocates lay particular stress upon the fact, that it would not extend to the enforcement of decrees. It, therefore, does not provide for the entire course of the strife, or permit of the abolishment of war establishments.

(2) The plan contains no suggestion as to who would determine whether the nation of which complaint had been made, had "gone to war," (which might not be difficult), or "committed acts of hostility" and prescribe the kind and amount of economic and of military force to be used against it; and, should the exigencies require it, to order out the forces. It can hardly be inferred that it would be the Council of Conciliation, as its duties would be specifically, "hearing, consideration and recommendation;" or, the Judicial Tribunal, whose functions would be the hearing and giving judgment on justiciable questions.

However as "their joint economic and military forces" can include an almost endless number of variations and combinations, it is to be assumed that they would be applied in a manner to comport with the seriousness of the offense. This would presumably impose upon the Court that was passing upon the merits of the contention, not only the duty of fixing the award thereon, but also, that of determining the alternative penalty under this provision should a nation meanwhile commit acts of hostility. As

the subject of such punishment could be considered by the Court only before the rendering of the decree on the merits, the fact that it would be discretionary would open the way to arguments, delays and temptations to use influence to have a low award or penalty set, all of which would be apt to result in the frustration of a determination to give a substantial decree; for it would but accord with human nature, for a majority of the Court, after showing severity in the one, to incline to leniency in a like degree in the other.

This further problem arises: Would the court not be obliged to continue the consideration and determine the differences on the merits, notwithstanding the fact that the war or acts of hostility were progressing, for its decision might be in favor of the nation that had started these acts, when they, at least from the moment of the decree, would be legal. It is not difficult to conceive a case where a nation has felt that its rights have been so flagrantly outraged as to lead to this situation.

Each court would be obliged to use caution not to proceed too far; for, the moment that a recommendation, or judgment had been pronounced, the council, or tribunal, respectively, would have completed its work, be *functus officio*, and the nation would, under the very provision of the plan, be at liberty to begin war.

(3) Where differences were deep-seated, as when founded on race prejudices, and there was a feeling that no proposition could be made to which all sides would accede, compliance might be made with these forms, but nothing could prevent the immediate commencement of preparation for war, to be used the moment that these formalities were fulfilled.

Should the offending nation consider it to be advantageous to strike at once, it could precipitate war, after the complainant nation had presented its case, by simply announcing that it rested. The court would then be obliged to give its decision for the complaining nation; and moreover, it could not delay in so doing and expect the nations to use "the forces," because the defendant nation had opened war, for the delay would be the fault of the court in not performing a function at the point for doing which it had arrived.

Did the defendant nation put in a case, the court would be in a position, on the ground of requiring time to consider the conflict of testimony or law, to delay the decision and thereby render the time of its announcement uncertain. Such uncertainty, in itself, would constitute an element of great danger. Even the assurance that war would not begin before the end of a year, as under the Bryan Treaties, in which case no great precipitation in preparation would result and the heat of passion would probably pass, would be wanting; and the effect would be to cause the nation believing war to be inevitable to speed up its preparations and bring itself to a high pitch of excitement from the moment that an appeal was made to the court.

(4) Variable punishment would necessitate almost ceaseless contentions as to the interpretation of the given penalty and surveillance as to its proper execution.

(5) The Elder explanation of leaving to each nation the freedom to contribute in each case what it chose, would call for special action by each nation, possibly at a time when its legislative body was not in session; would necessitate the discussion of the merits of the controversy, in

which some of the nations might incline to the side of the refusing nation; and would permit the use of pressure and friendship, even at that point, to render the procedure ineffective.

If such uncertainty existed as to marshalling the means for punishment, how could the penalty be fixed before they had been ascertained?

(6) On the other hand, if the military force is to be effectively organized, the following problems must be solved: (a) The appointment of a commander-in-chief, which, if not at first, would sooner or later result in inconceivable strife; (b) The concentration of the several contingents in a given country for the insurance of prompt action, when contentions would arise about having them, or not having them, according as the advantages or disadvantages of their presence generally and to the tradespeople, might predominate; (c) The difficulties of passing budgets for the contributions to their support, especially when they were to be quartered in a foreign country; (d) Those of mobilizing the contingents, should each remain at home until needed; (e) Those of transporting them when the many combinations as to destination are considered; (f) Those of getting certain contingents out, should the country not favor the cause of the call; (g) The extra requirements, should they proceed against the strongest country in the League, say, a present Germany, etc., etc.

The sponsors of this program cite the case of the suppression of the Boxer uprising, as an example of its operation; but they certainly have not familiarized themselves with the reports of that affair sufficiently to take cognizance of the care and concessions that were required to

prevent its failure and to appreciate the extraordinary pressure to co-operate that the urgency of the situation imposed upon the participants. They do not stop to consider that that was a rush to protect the lives of foreigners, exposed, perhaps, to death, which permitted of no hesitation; that it contemplated nothing further; that, at the start, the foreign nations had bodies of troops in the vicinity that were easily concentrated; that such action required no joint deliberation among the nations represented and no more than executive orders from each to put their several troops in action; that, having arrived for the rush, the joint command naturally fell to the ranking officer on the spot; that the country invaded had no voice in the matter; and that it was in such a position that it could offer almost no resistance.

(7) America lacks the capacity to contract under its present Constitution. The power to declare war is vested in the federal Congress, and The President and The Senate, to whom the treaty-making power is given, cannot make a binding agreement to enter into a convention under which war could be declared on behalf of America, by some international body, or in any other way.

(8) The reason for having two bodies, the Tribunal and the Council, is not apparent. The qualifications for each would supposedly be the highest. It might be, that great endowments of tact and suavity would be desirable attributes for the members of the Council; but such qualities could never be the determining factors in choosing them, when there would be so many graver considerations and the participation of so many nations would be necessary. Even great powers of persuasion would have no

place, as the members would not be expected to make direct appeals to the people of the aggressor nation, but simply to communicate their advice to the head of its government.

(9) As to the other features, see under "Judicial Court, Non-Justiciable Cases, Conciliation," etc.

The above objections apply to the Bryce plan, save that it contains some undeveloped suggestions as to the enforcement of decrees and the compulsion of nations that had not become parties to the convention, the proposal of The World's Court League, and others as far as they follow that of The League to Enforce Peace.

Mediation, Conciliation, Inquiry

Mediation and Conciliation are admirable neighborly offices and should be encouraged between nations as well as between individuals.

Various attempts are being made to establish conventions under which nations will be obliged, before opening hostilities, to allow others to intercede before them for a given period of time.

The advocates of these plans do not pretend that the latter will operate as positive stops to strifes, but are expedients to be tried prior to hostilities. Should they prove ineffective, war would probably follow, as it is not their endeavor to effect immediate disarmament.

The Dogger Bank Commission was organized under this plan, but it surely cannot be maintained that it affords a test of it, as Russia, already in the throes of a great war and with her European fleet on its way around the world to succor her Oriental fleet, was not in the position to use force back of her remonstrances against the greatest naval

power and at the latter's very threshold, but was obliged to accept such terms as she could negotiate.

It might be that when questions were not of great importance, nations would conform to such a provision by no other persuasion; but, from the moment that the period would begin to run, which of itself would fix a date for the opening of hostilities, could it be imagined that the people of either nation—the great masses of the people that form public opinion—would not begin to occupy themselves to the utmost with the preparations of war? And should no settlement be effected by the expiration of the period, could either nation endure the embarrassment which its failure to strike would occasion?

Of course, were arbitration compulsory, there would be no need of mediation and conciliation, as distinct institutions to be accorded a given period of time before the opening of hostilities.

The So-called Bryan Treaties

The treaties for the submission to Commissions, for investigation and report, in cases where the nations do not have recourse to arbitration, and bind themselves not to have resort to force before the report is handed in, is subject to the same objections as the conciliation plan above stated.

The United States Supreme Court as a Model

The Supreme Court of the United States is cited as the model upon which the International Court should be formed.

This Court, however, is not without its weak points:

Foremost, perhaps, is that resulting from the plan of

territorial representation. There are nine justices and the United States are divided into nine circuits, to each of which a justice is assigned. As a result, it has become the practice to appoint one justice from each circuit. This not only deprives the country of the choice in ability from the entire nation, but, when a vacancy occurs, the nomination being more or less a local affair, the opportunity is greater for the use of all kinds of pressure to advance the causes of popular favorites.

The opportunity to strengthen the hand of the president and the party in power at the time, by fortifying their political tenets, is seldom overlooked: for instance, the nominee must be a strong federalist, protectionist, or, at the present time, perhaps, a champion of human rights, rather than of property rights. Analogous difficulties would arise in the selection of a permanent member for an International Court.

It has no power to enforce a judgment against a State.

When a persuasive member has started the Court on a wrong course, it may continue upon it for years, before it is finally righted; as has been the case in regard to the application of the anti-monopoly (Sherman) law to all combinations in restraint of trade even though not "unreasonable."

Almost invariably when questions of a political nature, or even of sectional interest, have arisen, the lack of unanimity in the Court has shown that their training as jurists has little or nothing to do with the conclusions at which they arrive, if it is to be assumed that there is but one legal way that is right, which the advocates of a Judicial Court apparently do.

FURTHER CONVENTIONS

The Land

There are a number of world problems that confront the nations, the settlement of which might be effected at the close of the war in such a manner as to allay future strifes that appear otherwise to be inevitable.

The best way to consider them is doubtless to approach them at the present time as general abstract principles.

Mankind originated in spots and does not increase in like ratios, so that every now and then places have been over-populated and a spreading out from those centers has necessarily followed. This took place in the way of migrations before means of conveyance were developed and one after another from the centers of origin can be traced. These waves were often overwhelming; seldom went beyond the limits of earlier settlers; and, consequently, subsided upon the latter and crushed them mercilessly if they could not amalgamate or push them further into the wilderness.

Now that the most favorable parts of the earth have been appropriated, and we have reached a higher state of intelligence, other devices should be provided. To attempt to restrain a population when it has become very dense, to a limited territory, and especially when its people have reached a high degree of efficiency, is as unscientific as to ignite explosives in chambers that allow of no expansion and expect the latter not to burst.

In the abstract, the following principles are recognized: (1) one man has as much right to live as another; (2) as a given territory is only capable of maintaining a given number of beings, as long as there is vacant land that is

needed for the sustenance of man, he cannot be arbitrarily deprived of it; and (3) when groups of men, large enough to be treated as a nation, are sufficiently advanced in civilization to establish order and govern themselves, they should be allowed their independence.

Such is doubtless the sentiment today in America regarding the Philippines and Alaska. Could general disarmament be introduced and their rights as independent nations be assured it would be doubly strong.

These principles might be sufficiently established for the present by the following provisions in a convention:

Nations

The following countries shall be recognized by the adherents to the Disarmament and Arbitration Convention to be independent states entitled to equal recognition in the Society of Nations (naming them) and such other self-governing states as shall hereafter be formed, provided they shall have a population of, at least, inhabitants and a territorial extent, of, at least, square kilometers.

Colonial Territory

All detached territory governed by a mother country shall be considered colonial territory. Colonial territory shall be open to immigration from any country, unlimited as to numbers, but restricted as to health and morals, and the immigrants shall be allowed to become citizens under easy conditions. No such body of people, having a population and territory sufficient to become an independent state,

after it has advanced sufficiently to govern itself, shall unwillingly be ruled by another state. A plebiscite to test the wish of the people to achieve independence shall be afforded them by the mother country every twenty-five years, open to citizens who shall have been domiciled there for at least the space of twenty-five years. Such colonists shall be permitted to review any grievance against the mother country concerning the conduct of such plebiscite by the procedure prescribed in the Arbitration Convention.

Unorganized Territory

Any territory that contains an area with radii from a center of kilometers which does not include a fixed town with a population of, at least, domiciled inhabitants, a post office, telegraph office and schools for secondary instruction, shall be open to any nation for occupation and organization as colonial territory; provided, that the nation claiming it does not cause such requirements to be fulfilled within two years after the receipt of notice from another nation that it would like to settle it.

Provision should be made to assure to inland countries outlets to the sea, under reasonable conditions, such as those now existing in regard to the use of the Rhine, the Danube and the St. Lawrence Rivers, by water; and the railroad systems of America, by land.

The convention might, for instance, provide as follows:

All natural water ways, and improvements employed in connection therewith, shall be open for the use of peoples living inland, on reasonable conditions;

and the latter shall accord reciprocal privileges to the passage and trade of the peoples of the lowland.

Transportation over artificial routes shall be accorded under reasonable requirements and through shipments permitted without the exaction of customs duties.

It might further be well to fix, by convention some principals not yet thoroughly established, such as:

The territorial integrity of all nations shall be maintained, save that nations may consolidate, or dismember, by arrangement. Questions of unrecognized boundaries, nevertheless, may form a proper subject for arbitration.

The stranger, with a clean record, shall have the right to circulate under sanitary regulations; and, under added conditions, which shall be no more onerous than those imposed on citizens, or subjects, he shall have the right to sojourn; save, however, that a state may restrict the immigration of people of a lower class of civilization, if it is menaced with an inflow such as would perceptibly lower its own standard.

Duties, taxes and regulations affecting foreign commerce and foreigners, passing or sojourning, shall be reasonable and alike for all.

At the termination of the war, it is probable that the *statu quo ante* rule, restoring territory about to the situation before the war, will be followed; but Germany might well make the following concession to France:

Allow France to designate a section of Alsace and Lorraine, following promontories and ridges, to be ceded to her in case a majority of the voters who inhabited the section August 1, 1914, shall vote in favor

of annexation to France, the plebiscite to be under the control of some neutral committee. Should France mark off too large a section, she might gain nothing. Should she be modest in her attempt, she might acquire some territory adjacent to her frontier where French sympathy prevails, as that naturally predominates along the present border, and shades off as remoter parts are reached.[1]

A Decisive Victory Unfavorable for Enduring Peace

The time to introduce this plan is the present, while the fate of Europe is in the balance and before either of the contending sides has won such a decisive victory that it will assert the right to maintain peace by predominant armed force.

It can, at least, be perceived that neither belligerent will succeed in reducing the other so as to keep it down by force for even a generation.

The assurance of a sweeping victory is not so strong on either side as to justify the one or the other in incurring, say, again the amount of indebtedness already made, in the hope of accomplishing it; and no nation, no generation, can justify the imposition of such a burden upon its posterity, for there is where it will rest, when complete relief can be had by a plan that is practically the cessation of expenditures for armed protection and the diversion of the energy saved into economic channels, not to mention the greatest consideration — the immediate termination of

(1) To this idea President Wilson aptly applied the term "self-determination." It was followed in fixing the German-Schleswig boundary, which is probably the only new one that will endure.

The delimitations of the new Europeon States rest on the "self determination" of the diplomats at Versailles; and consequently, instability.

the war with its further destruction and maiming of men.

A peace on land secured by the military domination of Germany, or on the sea, by the naval rule of Britain, would be so humiliating and intolerable that it would only last until powers could combine to break it by a still greater war. Should the German navy be crushed, even France would not like to be told that thereafter it would be expected that her navy would remain in the Mediterranean. No nation should dominate. We have reached the state of civilization where intelligent judgment should rule.

As nations are not yet ready to depend upon the sense of right in the condemned to see that the punishments meted out to them are inflicted, any more than in the case of the individual, and cannot maintain orderly governments without enforcing obligations and inflicting penalties for the infraction of rights, a sanction by force is necessary. This force should be commensurate with the nation's economic strength, in navy and army, if the game is to remain one of war; but it is fortunate that the situation of nations to each other is such that a coercive power, free from physical force, contains even greater potency.

Would it not be better for America to utilize the great financial advantage that she still enjoys, to achieve by direct methods the result that all nations are seeking: namely, the abolition of armaments? It would cost America far less to use a portion of the means that she is now dissipating in the war did she purchase the navies of the world, using in part payment the loans recently made, and scrap them; and even, in addition, did she contribute largely to the rehabilitation of the countries devastated by the war. Instead of wasting her means in a cause in which many of her people do not sympathize, she would thereby

express the feeling of the best of her citizens, that they did not wish to amass wealth through the misfortunes of the Allies, or other people. In such a work, however, Japan, which has gained greatly by the war, should join America.

In the building up and maintenance of the present system of armed peace, America is also responsible. Without having made any serious and direct effort to achieve the end herein advocated, she has for years been laying down, keel for keel, cruisers and battleships to equal those being built by France or Germany, and even disputing the second place with France until the latter was outdistanced by Germany, with the result, which, it at least now can be seen, was inevitable. She, however, is still in a position where, if she will but take the lead in the opposite direction. all belligerents will hasten to join her.

At the present time, a bare offer to mediate between the belligerents, or to declare an armistice for the purpoes of considering terms of peace, is hardly possible, as the advantage would accrue chiefly to the one side in giving it needed time for preparations, the progress of which could not be absolutely stayed. Wherefore, the desirability of having a plan, that can be studied, quickly grasped and accepted in principle while the struggle continues, is apparent.

The great object of the war from all sides is the establishment of international relations on an orderly and permanent basis; and the rational way to achieve it is to work from the earliest moment upon a plan with that objeot directly in view, so that the minds of the people of both belligerents may be focused and kept upon it, and not overcome by agitation at the atrocities of the war, when intelligent action ceases. It should be realized that there

are no means that arouse and sustain resentment as readily as the employment of brute force to impose one's will.

The time to make use of such a plan has arrived; for, did it prescribe such guarantees as would be considered sufficient for securing this world relationship, the way out of the war could be discerned. With it as a guide for future adjustment, consents could quickly be had that would end it. Indeed, answers to two questions concerning paramount interests, but which about balance each other, could, and, if made, would now be given that would lead speedily to its termination:

Would England be satisfied to end the conflict should Germany disband her army, and would Germany be satisfied should England abandon her navy? Such a result would clear away the greatest of the underlying causes of of the war, the recognized menaces to each, and permit both sides to retire not only without injury to national pride, but with the feeling on the part of each that a gain had been obtained sufficient to compensate for the great cost. This would be the only basis of peace that would be worth while: one leaving no great rancor, and thereby containing the promise of endurance.

The co-operation of both belligerents is essential for the establishment and maintenance of any future relationship that is to endure.

The mechanical method of battering may continue for years without result, while chemical treatment—may we call it— by removing the cause, the necessity for arms, will force militaristic governments to disappear like snow under a hot sun, as people will not support such governments when they feel that there is no need for them, and autocracies cannot exist without military power.

Conclusion

International relationship is governed more than most men conceive, by the attitude of mind; and if a country is without fear, as it does not see in its neighbors its possible slayers, and the possible invaders of its territory, because they are not armed, and feels that it can have a fair trial in a court of arbitration and the award enforced, it needs no military establishment.

The fact that in none of the American States is the need felt of arming as against its neighbors, or as against Canada, is good proof of this proposition; the same fact in regard to the American colonies, upon the establishment of the United States, is better, as they differed much in origin; and still better, is that to be found in Switzerland, which for centuries has been composed of people of three races, each of which still retains its language and customs and its section of the country. The paramount endeavor of each group is to support the federation, as each is conscious of the fact that its own strength depends upon the effective operation of the whole.

While many are now willing to place reliance in moral sanction, and it is confidently believed that the attitude of mind above mentioned would almost always justify such reliance, still to follow Lincoln's saying, it must be admitted, that, while moral sanction would suffice to restrain all of the nations part of the time, and part of the nations all of the time, it is doubtful if it would restrain all of the nations all of the time; and so, as in municipal legislation, penalties must be set, not for the law-abiding, but for the law-breaking part of the community. Nations, too, could not be induced to disarm without some stronger

assurance of compliance with decrees, than the moral sanction.

No provision is made in this plan in regard to official inspection as to the stutus of disarmament, which matter is left to the honor of the several nations in the making of reports.

Each nation should enact drastic laws against the violation of the Convention by its citizens, subjects, or anyone on its territory, and enforce them stringently.

The object of the present plan is not to bring all causes to courts of arbitration, but simply to force that procedure upon nations that will not negotiate; for negotiation should at all times be preferable to arbitration, the result of which is always uncertain.

The weakest point in the isolation plan would probably lie in the possibility, that when some question between two or more States arose, many others might observe, that, while the controversy did not involve them directly, nevertheless, the principle was one that affected them also, and would insist upon intervening. This might deprive the court of its judicial character as, with this greater power to eliminate from the panel, almost all but persons favorable to their side of the controversy could be kept off of the Commission.

Nations, too, might be precipitate in intervening in a cause in anticipation of some development in its scope that might involve or interest them; and this is somewhat obviated by leaving opportunity open whereby they might enter under certain restrictions after the issues were defined. Finally, an orderly way for terminating the pro-

posed Convention is provided, with the expectation, however, that use of it would never be made.

As a safeguard against rupture, it must be assumed that the benefits from such a world organization would be so great, that a powerful group would appear, not only to preserve the institution, should its existence be threatened, but also at all times to induce nations that were about to litigate a matter which should be determined by a convention, to defer until a conference could be called and had provided for it, as well as to induce a nation that had secured a decree out of proportion to its right, to desist from demanding its full execution.

Like any piece of mechanism, it would not be sufficient to simply set up and start an institution under this or any plan. It must be watched in its operation, for the freedom of the world from military menace would depend upon it.

"Eternal vigilance is the price of liberty."

ANNEX I

A (PROPOSED) CONVENTION

(Not included in copyright)

FOR

COMPULSORY DISARMAMENT AND ARBITRATION, UNDER THE SANCTION

OF

ISOLATION, OR NON-INTERCOURSE

(Four of the Great Powers, at least), desirous of establishing the practice of arbitration for the settlement of all international differences and of effecting a general disarmament of all of the Powers, enter into this Convention [to continue in force until the first of January, nineteen hundred and forty (1940)], and bind themselves by the following articles:

Arbitration Commissions

ART. I.—One or more nations may submit a controversy with one or more other nations that they cannot settle amicably, to the decision of an Arbitration Commission, by filing, in the Office of the Clerk of the Court of The Hague, a complaint containing a clear and comprehensive statement of the claim and indicating in its title the nations defendant.

ART. II.—The Permanent Administrative Board of the Court shall forthwith cause the complaint to be published in full and service of it to be made on the nations defendant through the hands of their diplomatic representatives at The Hague, or neighboring capitals.

ART. III.—Each nation served shall cause its answer to be filed in the Office of the Clerk within eight weeks from the filing of the complaint.

ART. IV.—If a third nation considers that its interests are involved in the controversy, it may intervene at any moment before the final submission, upon entering its appearance, filing its cross bill, causing the same to be published immediately by The Court and paying the costs to which the interruption gives rise. It cannot demand the joinder of still other nations as parties defendant, if it does not do so within four weeks from the filing of the original complaint; or the enlargement of the question, if not made before the opening of the hearings; unless, however, desired by a majority of the Arbitration Commission.

ART. V.—Each nation which has caused its appearance to be entered in a case may name two members of the Arbitration Commission, and the members thus named shall choose additional members: to wit, three, if only two nations are at conflict; and seven, if more than two nations have appeared.

ART. VI.—The nomination of the additional members shall not take place before the expiration of a period of six weeks from the filing of the complaint and may be made by simple agreement; but any nation that has caused its appearance to be entered, may require a meeting to name the additional members, upon filing a petition therefor in the Office of the Clerk specifying a date therefor at least four weeks distant. The meeting shall take place at the Palace of The Hague. Should no other way of choosing these members be unanimously adopted, each nation, in the order of the entry of its appearance at the Clerk's

Office, shall have the right to present three names; and one week later, from this list, in its turn, in the same order, to strike out one at a time, until there shall only remain the requisite number; and these persons, or their substitutes, taken in the inverse order of their elimination, shall be the additional members. If less than five nations are represented at the meeting, only the names of Members of The Court, citizens of nations which nave not appeared or been named as defendants in the case, may be presented.

ART. VII.—Should the nomination, or the choice of the additional members be once made, the nations intervening subsequently shall not have the right to require a renomination, unless at least three of these nations demand it. This may only be done once, unless with the consent of two-thirds of the nations that have appeared.

ART. VIII.—The Sessions of each Arbitration Commission shall be held at the Palace of The Hague and they shall commence within the six weeks which follow immediately the nomination or the choosing of the additional members, unless otherwise agreed.

ART. IX.—If, during the course of an arbitration, one of the additional members is prevented from continuing his services, or is disqualified because his nation becomes a party, a substitute shall be called and the case shall be presented from the beginning, unless otherwise agreed. A nation may, at any moment, replace one of its own members.

ART. X.—The decision of the Arbitration Commission shall be reasoned (*motivee*), set forth in writing, signed by a majority of the arbitrators and filed in the office of the Clerk of the Court of The Hague, who shall forthwith publish and deliver a certified copy of it to each contestant.

It shall contain findings of fact and law upon each request to find and shall be delivered at the final hearing in the case.

ART. XI.—All of the Commissioners shall have the right to vote when there are but two nations at conflict; only the additional members shall vote in other cases, but the other Commissioners may take part in all of the deliberations.

ART. XII.—A plurality only of the voices which take part in the vote shall be necessary for each decision. No vote shall be taken except after timely notice of the hour therefor. The final decision shall comprise a condemnation for costs, including fees for the Commissioners.

ART. XIII.—The decision upon the main issue shall be final, save, in the case of fraud committed in the matter by one or more of the Commissioners.

ART. XIV.—If a nation, a party to an arbitration, suspicions the existence of such a case of fraud, it may by petition, institute a Tribunal of The Court of The Hague.

ART. XV.—If a nation against which a complaint for settlement by arbitration has been filed, fails to send its Commissioners, or to comply with a final decision rendered by an Arbitration Commission, the nation injured may institute a Tribunal of The Court of The Hague.

Tribunals of the Court of the Hague

ART. XVI.—A nation which claims the right to institute a Tribunal of The Court of The Hague, may file in the office of the Clerk, a petition therefor, setting forth as fully as possible the ground on which it bases its claim. The Court shall thereupon cite, according to the rules prescribed for the service of an arbitration complaint, the

nations named as defendants, or which were parties in the arbitration case; and these nations may cause their appearance to be entered in the case before the Tribunal.

The petition shall contain the designation of a day of meeting at The Palace of The Hague at least six weeks in advance, to choose the Members of the Tribunal, but any of the other nations, the appearance of which has been entered, may assign an earlier day therefor, observing always the above-mentioned period.

ART. XVII.—The Tribunal shall be composed of seven of The Members of The Court, other than those who served as Commissioners in the arbitration, or nationals of a nation involved in the contest. They shall be chosen, by those of the nations having appeared which shall attend on the day indicated. Each nation shall have the privilege of striking off a name from the Roll of the Members, in turn, in the order of its appearance, until but seven names remain.

ART. XVIII.—The Members chosen, as well as the five of whom the names were the last to be stricken from the Roll, shall be advised by the Court, of their nominations, and each Member thus notified shall immediately indicate to the Court, whether it can count upon his presence. Each vacancy shall be filled by the substitution of the first Member available, taken in the inverse order of the elimination and The Court shall take care that there are always two substitutes ready to sit.

ART. XIX.—The sessions of the Tribunal shall commence within six weeks from the day of the eliminations. They shall be held at the Palace of The Court of The Hague, unless The Administrative Board shall arrange otherwise.

ART. XX.—The Tribunal shall have the competency to pass upon the question of the perpetration of a fraudulent act such as that specified hereinabove; and, if it finds affirmatively, it shall announce to the nations that took part in the Commission, that the petitioner nation has the right to institute a new commission, which shall be composed of persons other than those who formed the fraudulent commission.

ART. XXI.—The Tribunal shall have the competency to establish the refusal of a nation to submit a dispute to arbitration or to comply with a decision rendered by a commission; and, if it decides in the affirmative, it shall immediately place under interdiction all of the direct and indirect communications of the offending nation with all countries, except, during the eight weeks beginning with the interdiction, the return of the citizens of the offending nation and the departure of strangers.

ART. XXII.—The Tribunal shall maintain the interdiction until it shall ascertain that the defaulting nation has fulfilled its obligations under this Convention.

ART. XXIII.—The votes of a plurality of the Members of the Tribunal who take part in the voting, the time for which shall be duly announced in advance, shall suffice for each decision.

ART. XXIV.—The final decision shall include a condemnation for costs, including fees for the Members who compose the Tribunal, as also for those who have attended to act as substitutes.

ART. XXV.—By the first of.....nineteen hundred and , each of the nations shall have reduced its soldiers under arms to a number which shall not exceed one for every thousand inhabitants, which pro-

portion shall be maintained throughout the duration of the Convention, shall have destroyed or transformed such portion of its arms and war munitions as it shall not be allowed to retain by the Armament Commission, shall have furnished to said Commission a complete report of all such property retained by it, giving the location, such description and numbers as the latter shall prescribe, and which the latter shall forthwith publish. Like reports shall be made and published quarterly.

ART. XXVI.—All ships of war belonging to the cruiser and battleship classes, shall forthwith be placed out of commission and broken up as speedily as possible.

ART. XXVII.—Throughout the duration of this Convention, no nation shall construct or permit the construction in its territory of ships of over three thousand tons displacement which could, without great modifications, be used as ships of war.

ART. XXVIII.—A Naval Commission, to which each of the nations which shall adhere to this Convention may name one member, shall meet at the Palace of The Hague, at least three months before its entry into vigor, to adopt such rules regarding the limits to be observed in the construction of ships as the provision of Article XXVII requires. Its report shall form a part of this Convention without further ratification.

ART. XXIX.—A Disarmament Commission, to which each of the nations that shall adhere to this Convention may name one member, shall be formed immediately and continued throughout the duration of this Convention and shall be charged with the care of all exigencies which may arise by reason of the provisions herein regarding

disarmament. Each nation adhering shall have the right to substitute another representative.

ART. XXX.—No nation shall construct fortifications, or defenses, unless they be at a distance of twenty kilometers, at least, from a neighboring country. Those that exist at present in this belt may be maintained in good repair, but not augmented.

ART. XXXI.—Each nation, although not directly affected, shall have the right to treat the infraction of any of the provisions under this title of disarmament as a ground for arbitration.

ART. XXXII.—Articles
of the Convention of The Hague are superseded by the provisions of the present Convention.

Continuation

[ART. XXXIII.—In the month of January, nineteen hundred and thirty-eight, a conference shall be held at the Palace of The Hague to consider the continuation of this convention.]

Rescission

ART. XXXV.—At any time during the continuance of this Convention, should two or more nations present the claim to the Court of the Hague that as many as three other nations were demanding the right to take part in an arbitration in which they had no direct interest but for the purpose of obtaining an undue preponderance among the arbitrators, the Clerk of the Court shall forthwith call a conference to be held at the Palace of The Hague at a date not distant more than one month; and, if at said conference, States, representing a third of the population of the Globe, that of their colonies and possessions

included, according to the estimate of the Statesman's Yearbook for the previous year, shall vote to rescind this Convention, all States shall be thereby relieved from all obligations hereunder. After the expiration of five days from that set for the convening of such conference, the presentation to the presiding officer thereof, or, if the conference has not organized, or is not proceeding, the deposit in the Clerk's Office of a petition by such a group of States to rescind this Convention for such cause, shall operate its rescission without further action. Members of the Court shall be recognized as fully accredited by their respective States for this purpose, and the signature of one Member shall suffice for the State which he represents, unless there is a conflict among the Members of a given State, when the action of the majority shall be accepted as that of such State.

ANNEX II

THE DRAFT OF THE CONSTITUTION OF THE LEAGUE OF NATIONS

formulated by the special Commission which was authorized by the Peace Conference on January 25, reported to the full Conference on February 14, 1919, by President Wilson, and unanimously adopted by representatives of fourteen nations on the Commission.

Preamble—In order to promote internal cooperation and to secure international peace and security by the acceptance of obligations not to resort to war, by the prescription of open, just and honorable relations between nations, by the firm establishment of the understandings of international law as the actual rule of conduct among governments and by the maintenance of justice and scrupulous respect for all treaty obligations in the dealings of organized peoples with one another, the Powers signatory to the covenant adopt this constitution of the League of Nations:

ARTICLE I.

The action of the high contracting parties under the terms of this covenant shall be effected through the instrumentality of a meeting of a body of delegates representing the high contracting parties, of meetings at more frequcnt intervals of an executive council and of a permanent international secretariat to be established at the seat of the league.

ARTICLE II.

Meetings of the body of delegates shall be held at stated intervals and from time to time as occasion may require for the pupose of dealing with matters within the sphere of action of the league. Meetings of the body of delegates shall be held at the seat of the league or at such other places as may be found convenient, and shall consist of representatives of the high contracting parties. Each of the high contracting parties shall have one vote, but may have not more than three representatives.

ARTICLE III.

The executive council shall consist of representatives of the United States of America, the British Empire, France, Italy and Japan, together with representatives of four other States, members of the league. The selection of these four States shall be made by the body of delegates on such principles and in such manner as they think fit. Pending the appointment of these representatives of other States representatives of (blank left for names) shall be members of the executive council.

Meetings of the council shall be held from time to time as occasion may require and at least once a year, at whatever place may be decided on, or failing any such decision, at the seat of the league, and any matter within the sphere of action of the league or affecting the peace of the world may be dealt with at such meetings.

Invitations shall be sent to any Power to attend a meeting of the council at which such matters directly affecting its interests are to be discussed, and no decision taken at any meeting will be binding on such Powers unless so invited.

ARTICLE IV.

All matters of procedure at meetings of the body of delegates or the executive council, including the appointment of committees to investigate particular matters, shall be regulated by the body of delegates or the executive council, and may be decided by a majority of the States represented at the meeting.

The first meeting of the body of delegates and of the executive council shall be summoned by the President of the United States of America.

ARTICLE V.

The permanent secretariat of the league shall be established at ——, which shall constitute the seat of the league. The secretariat shall comprise such secretaries and staff as may be required, under the general direction and control of the secretary-general of the league, who shall be chosen by the executive council; the secretariat shall be appointed by the secretary-general subject to confirmation by the executive council.

The secretary-general shall act in that capacity at all meetings of the body of delegates or of the executive council.

ARTICLE VI.

Representatives of the high contracting parties and officials of the league when engaged in the business of the league shall enjoy diplomatic privileges and immunities and the buildings occupied by the league or its officials or by representatives attending its meetings shall enjoy the benefits of extraterritoriality.

ARTICLE VII.

Admission to the league of States not signatories to the covenant and not named in the protocol hereto as States to be invited to adhere to the covenant requires the assent of not less than two-thirds of the States represented in the body of delegates and shall be limited to fully self-governing countries, including dominions and colonies.

No State shall be admitted to the league unless it is able to give effective guarantees of its sincere intention to observe its international obligations and unless it shall conform to such principles as may be prescribed by the league in regard to its naval and military forces and armaments.

ARTICLE VIII.

The high contracting parties recognize the principle that the maintenance of peace will require of the reduction national armaments to the lowest point consistent with national safety and the enforcement by common action of international obligations, having special regard to the geographical situation and circumstances of each State, and the executive council shall formulate plans for effecting such reduction.

The executive council shall also determine for the consideration and action of the several governments what military equipment and armament is fair and reasonable in proportion to the scale of forces laid down in the programme of disarmament, and these limits, when adopted, shall not be exceeded without the permission of the executive council.

The high contracting parties agree that the manufacture by private enterprise of munitions and implements of war lends itself to grave objections, and direct the executive council to advise how the evil effects attendant upon such manufacture can be prevented, due regard being had to the necessities of those countries which are not

able to manufacture for themselves the munition and implements of war necessary for their safety.

The high contracting parties undertake in no way to conceal from each other the conditions of such of their industries as are capable of being adapted to warlike purposes or the scale of their armaments, and agree that there shall be full and frank interchange of information as to their military and naval programmes.

ARTICLE IX.

A permanent commission shall be constituted to advise the league on the execution of the provisions of Article VIII. and on military and naval questions generally.

ARTICLE X.

The high contracting parties shall undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all States members of the league. In case of any such aggression or in case of any threat or danger of such aggression the executive council shall advise upon the means by which the obligation shall be fulfilled.

ARTICLE XI.

Any war or threat of war, whether immediately affecting any of the high contracting parties or not, is hereby declared a matter of concern to the league, and the high contracting parties reserve the right to take any action that may be deemed wise and effectual to safeguard the peace of nations.

It is hereby also declared and agreed to be the friendly right of each of the high contracting parties to draw the attention of the body of delegates or of the executive council to any circumstance affecting international intercourse which threatens to disturb international peace or the good understanding between nations upon which peace depends.

ARTICLE XII.

The high contracting parties agree that should disputes arise between them which cannot be adjusted by the ordinary processes of diplomacy they will in no case resort to war without previously submitting the questions and matters involved either to arbitration

or to inquiry by the executive council and until three months after the award by the arbitrators, or a recommendation by the executive council, and that they will not even then resort to war as against a member of the league which complies with the award of the arbitrators or the recommendation of the executive council.

In any case under this article the award of the arbitrators shall be made within a reasonable time, and the recommendation of the executive council shall be made within six months after the submission of the dispute.

ARTICLE XIII.

The high contracting parties agree that whenever any dispute or difficulty shall arise between them which they recognize to be suitable for submission to arbitration and which cannot be satisfactorily settled by diplomacy, they will submit the whole matter to arbitration. For this purpose the court of arbitration to which the case is referred shall be the court agreed on by the parties or stipulated in any convention existing between them. The high contracting parties agree that they will carry out in full good faith any award that may be rendered. In the event of any failure to carry out the award the executive council shall propose what steps can best be taken to give effect thereto.

ARTICLE XIV.

The executive council shall formulate plans for the establishment of a permanent court of international justice and this court shall, when established, be competent to hear and determine any matter which the parties recognized as suitable for submission to it for arbitration under the foregoing article.

ARTICLE XV.

If there should arise between States' members of the league any dispute likely to lead to rupture, which is not submitted to arbitration as above, the high contracting parties agree that they will refer the matter to the executive council; either party to the dispute may give notice of the existence of the dispute to the secretary-general, who will make all necessary arrangements for a full investigation and consideration thereof. For this purpose the parties agree to communicate to the secretary-general, as promptly as possible, state-

ments of their case with all the relevant facts and papers, and the executive council may forthwith direct the publication thereof. Where the efforts of the council lead to the settlement of the dispute a statement shall be published indicating the nature of the dispute and the terms of settlement, together with such explanations as may be appropriate.

If the dispute has not been settled a report by the council shall be published, setting forth with all necessary facts and explanations the recommendation which the council thinks just and proper for the settlement of the dispute. If the report is unanimously agreed to by the members of the council other than the parties to the dispute the high contracting parties agree that they will not go to war with any party which complies with the recommendations and that, if any party shall refuse so to comply, the council shall propose measures necessary to give effect to the recommendations.

If no such unanimous report can be made it shall be the duty of the majority and the privilege of the minority to issue statements indicating what they believe to be the facts and containing the reasons which they consider to be just and proper.

The executive council may in any case under this article refer the dispute to the body of delegates. The dispute shall be so referred at the request of either party to the dispute, provided that such request must be made within fourteen days after the submission of the dispute. In a case referred to the body of delegates all the provisions of this article and of Article XII. relating to the action and powers of the executive council shall apply to the action and powers of the body of delegates.

ARTICLE XVI.

Should any of the high contracting parties break or disregard its covenants under Article XII. it shall thereby *ipso facto* be deemed to have committed an act of war against all the other members of the league, which hereby undertakes immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the covenant breaking State, and the prevention of all financial, commercial or personal intercourse between the nationals of the covenent

breaking State and the nationals of any other State, whether a member of the league or not.

It shall be the duty of the executive council in such case to recommend what effective military or naval force the members of the league shall severally contribute to the armed forces to be used to protect the covenants of the league.

The high contracting parties agree further that they will mutually, support one another in the financial and economic measures which may be taken under this article in order to minimize the loss and inconvenience resulting from the above measures and that they will mutually support one another in resisting any special measures aimed at one of their number by the covenant breaking State, and that they will afford passage through their territory to the forces of any of the high contracting parties who are co-operating to protect the covenants of the league.

ARTICLE XVII.

In the event of disputes between one State member of the league and another State which is not a member of the league, or between States not members of the league, the high contracting parties agree that the State or States not members of the league shall be invited to accept the obligations of membership in the league for the purposes of such dispute upon such conditions as the executive council may deem just, and upon acceptance of any such invitation the above provisions shall be applied with such modifications as may be deemed necessary by the league.

Upon such invitation being given the executive council shall immediately institute an inquiry into the circumstances and merits of the dispute and recommend such action as may seem best and most effectual in the circumstances.

In the event of a Power so invited refusing to accept the obligations of membership in the league for the purposes of the league which in the case of a State member of the league would constitute a breach of Article XII., the provisions of Article XVI. shall be applicable as against the State taking such action.

If both parties to the dispute when so invited refuse to accept the obligations of membership in the league for the purpose of such dispute, the executive council may take such action and make such

recommendations as will prevent hostilities and will result in the settlement of the dispute.

ARTICLE XVIII.

The high contracting parties agree that the league shall be intrusted with general supervision of the trade in arms and ammunition with the countries in which the control of this traffic is necessary in the common interest.

ARTICLE XIX.

To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well being and development of such peoples form a sacred trust of civilization, and that securities for the performance of this trust should be embodied in the constitution of the league.

The best method of giving practical effect to this principle is that the tutelage of such peoples should be intrusted to advanced nations who by reason of their resources, their experience or their geographical position can best undertake this responsibility, and that this tutelage should be exercised by them as mandatories on behalf of the league.

The character of the mandate must differ according to the stage of the development of the people, the geographical situation of the territory, its economic conditions and other similar circumstances.

Certain communities formerly belonging to the Turkish Empire have reached the stage of development where their existence as independent nations can be provisionally recognized subject to the rendering of administrative advice and assistance by a mandatory Power until such time as they are able to stand alone. The wishes of these communities must be a principal consideration in the selection of the mandatory Power.

Other peoples, especially those of central Africa, are at such a stage that the mandatory must be responsible for the administration of the territory subject to conditions which will guarantee freedom of conscience or religion, subject only to the maintenance of public order

and morals, the prohibition of abuses such as the slave trade, the arms traffic and the liquor traffic, and the prevention of the establishment of fortifications or military and naval bases and of military training of the natives for other than police purposes and the defence of territory, and will also secure equal opportunities for the trade and commerce of other members of the league.

There are territories such as southwest Africa and certain of the South Pacific isles which, owing to the sparseness of their populations or their small size or their remoteness from the centres of civilisation or their geographical contiguity to the mandatory State, and other circumstances, can be best administered under the laws of the mandatory State as integral portions thereof, subject to the safeguards above mentioned in the interests of the indigenous population.

In every case of mandate the mandatory State shall render to the league an annual report in reference to the territory committed to its charge.

The degree of authority, control or administration to be exercised by the mandatory State shall, if not previously agreed upon by the high contracting parties in each case, be explicitly defined by the executive council in a special act or charter.

The high contracting parties further agree to establish at the seat of the league a mandatory commission to receive and examine the annual reports of the mandatory powers, and to assist the league in insuring the observance of the terms of all mandates.

ARTICLE XX.

The high contracting parties will endeavor to secure and maintain fair and humane conditions of labor for men, women and children both in their own countries and in all countries to which their commercial and industrial relations extend, and to that end agree to establish as part of the organization of the league a permanent bureau of labor.

ARTICLE XXI.

The high contracting parties agree that provision shall be made through the instrumentality of the league to secure and maintain freedom of transit and equitable treatment for the commerce of all

States members of the league, having in mind, among other things, special arrangements with regard to the necessities of the regions devastated during the war of 1914-1918.

ARTICLE XXII.

The high contracting parties agree to place under the control of the league all international bureaus already established by general treaties if the parties to such treaties consent. Furthermore they agree that all such international bureaus to be constituted in future shall be placed under control of the league.

ARTICLE XXIII.

The high contracting parties agree that every treaty or international engagement entered into hereafter by any State, member of the league, shall be forthwith registered with the secretary-general and as soon as possible published by him, and that no such treaty or international engagement shall be binding until so registered.

ARTICLE XXIV.

It shall be the right of the body of delegates from time to time to advise the reconsideration by States, members of the league, of treaties which have become inapplicable, and of international conditions, of which the continuance may endanger the peace of the world.

ARTICLE XXV.

The high contracting parties severally agree that the present covenant is accepted as abrogating all obligations *inter se* which are inconsistent with the terms thereof, and solemnly engage that they will not hereafter enter into any engagements inconsistent with the terms thereof. In case any of the Powers signatory hereto or subsequently admitted to the league shall, before becoming a party to this covenant, have undertaken any obligations which are inconsistent with the terms of this covenant, it shall be the duty of such Power to take immediate steps to procure its release from such obligations.

ARTICLE XXVI.

Amendments to this covenant will take effect when ratified by the States whose representatives compose the executive council and by three-fourths of the States whose representatives compose the body of delegates.

ANNEX III

MEMORANDUM
ON
THE DRAFT OF THE CONSTITUTION OF THE LEAGUE OF NATIONS

The people of the United States see in the draft references to "the reduction of national armaments to the lowest point consistent with national safety," "the high contracting parties will submit the whole matter to arbitration," "permanent court of international justice," "prohibition of all intercourse," "effective military and naval force," and, without reading deeper, many are inspired by the belief that the Constitution will secure all of these features for them. They forget that competitive struggles are still to be the order of the day between nations, as between people, and that it is not to be expected that those with whom they deal will be so altruistic that they need give no attention to their own interests. Did they but take the trouble to know what the language imports, they would discover that, on the very face of the draft, the above features were largely delusions.

They do not know, or have forgotten, that, because of just such neglect, they are obliged to let freight in foreign vessels pass through their own Panama Canal on the payment of lower toll than they are allowed to collect on that under their own flag; and that they are now on the point of doing infinitely worse, if they accept the draft as proposed.

Attention is called to the following points in its construction:

I.

Although not affecting the proposed position of America adversely, the first articles should not be passed over without the following mention:

The first three articles provide for three organs: a body of delegates, in which each member nation would have three representatives; the Executive Council to have nine members; and a secretariat to be in the charge of a Secretary General. The first would be empowered to deal with "matters within the sphere of action of the League" and the second, with "any matter within the sphere of action of the League." The impression at first glance is that the body of delegates would be the popular branch of the government and would participate in the general legislation; that here is the bestowal of equal powers on the small States—the much expected democratization of the world.

In empowering the Council, however, the word "any" is placed before the word "matter" and a little comparison of the two phrases discloses that, while the one, regarding the Council, would give it plenary powers, the other, relating to the delegates, is only a clause of limitation; and simply means, that whatever they are permitted to do, must be within the sphere of action of the League. Then, on running through the instrument, it appears, that all power is specifically delegated to the Council, except that the body of delegates would be competent (1) to select the four other states to be represented in the Council (Art. III); (2) to have its attention drawn, as a friendly right, to circumstances threatening to disturb the peace,

but without power to act thereon (Art. XI); (3) to act as a substitute court of an impossible composition (Art. XV and see below); and (4) to advise the reconsideration by States of treaties and of conditions which may endanger the peace of the world (Art. XXIV). [The assent to the admission of other states to the League (Art. VII) and the power of amendment (Art. XXVI) would be exercised directly by the member States.]

When the body of delegates is convoked by our President (Art. IV) there will, therefore, be but one act that it may perform: the selection of the additional four States to be represented in the Council; but, before it can be convoked, can convene and select the four States (if, indeed, an agreement can ever be reached), the Council will, "pending the appointment," have filled these places (possibly with the representatives of dominions and colonies) or, without filling them, have completed its organization and determined upon its recommendation as to the armaments that each nation may maintain. The body of delegates can only be convoked when the occasion arises for the purposes under 2 and 3, above, and the only occasion when it can convene at its own suggestion will be for the purpose under 4, above.

Will the body of delegates ever assemble from the corners of the earth to exercise such empty privileges? Is this America's idea of fairness toward small States?

(*Suggestion followed in the Revision, by the insertion of "any" in Article 3*)[1].

(1) This amendment constituted the only authority in the Covenant for the discussion of the question of mandates by the Assembly at Geneva, and caused much displeasure to Mr. Balfour, who depended upon the careful wording of Art. 22 of the Covenant (p. 103) to keep the subject out of the jurisdiction of the nations generally.

II.

Article IV provides, that "matters of procedure at meetings" may be decided by a majority of the States represented, but is silent as to votes upon matters of substance.

Lord Robert Cecil is reported, in the New York Times of February 23, as having stated: "the decisions of the League will, generally speaking, *only be binding if unanimously arrived at*"; and it seems that the President expressed this idea in connection with our control of immigration; while Senator Borah maintains, that a majority of five would suffice; and doubtless most jurists would so interpret the articles. Indeed, it could not be held, that a measure supported by the votes of three members of the Council, being a majority of a quorum, would be illegal; and that fact might afford a sufficient argument to uphold some pernicious action and lead to very serious results.

(*Suggestion followed in Article 5*).

III.

Next, arises the doubt, introduced in Article VII, defining member States by the words: "shall be limited to fully self-governing countries, including dominions and colonies." This has already been interpreted to give Great Britain additional votes for Canada and each colony and would mean a league within the League, unless the obligation in Article XXV, "the present covenant is accepted as abrogating all obligations *inter se* which are inconsistent with the terms thereto," is calculated to sever the relationship and render the British possessions inde-

pendent states, which could not well be sustained. The expression is equivocal, and the addition "including dominions and colonies," has no use unless it is the intention to give Great Britain extra votes. It gives rise to the supposition that the unit of representation in international relations is not to be the independent state and that India, or Ireland, for instance, may appear as a litigant. It should be stated squarely.

(*Suggestion followed by naming them in the Annex*).

IV.

The Secretary General, for whom provision is made in Article V, would be an unnecessarily exalted personage; for, clothed with the power conferred under Article XV, he could cause nations to wait their turn and attend upon his convenience and even pleasure, as to when he would make the "necessary arrangements for a full investigation and consideration" of their disputes. As he is to act in the capacity of Secretary "at all meetings of the body of delegates or of the Executive Council," there will doubtless be long periods when he cannot give attention to the making of arrangements, and it may even be necessary for one body to defer its meeting until the other has adjourned and he can be present so that it may legally function.

He should simply be a court clerk, as is the clerk of the Court of The Hague, without powers of discretion, responsible for the functioning of his office in a prescribed manner and for the custody of documents, the preparation

of which should be left to the initiative and discretion of litigants.

V.

With the adoption of the unanimity rule as interpreted by the President and leading Englishmen, the Constitution would not assure the disarmament of any of the large naval or military establishments, for the simple failure of concurrence in such determination under Article VIII by the member of the Council from the country most affected, would block it.

To leave the acceptance of the "recommendation" to the approval of the legislature of each nation with the restriction that, after adoption, the nation could not exceed the limit without the permission of the Executive Council, would be to introduce uncertainty upon uncertainty; for what nation would act first, knowing that no one could bind the legislature of its next rival to carry out an understanding to make an equivalent reduction?

The reduction of armament should not be delegated wholly to the care of a committee, but should be established along general lines in the Constitution; as for instance, military forces should not exceed one to a thousand of population—about our peace ratio; and all battleships and cruisers of over three thousand tons displacement should be destroyed. If armed force is to remain in the background, dependence will continue to be placed on it and the sanction of non-intercourse, or isolation, will be shorn of its efficacy and be a useless experiment.

It will later develop that no agreement as to partial disarmament or a limitation of armaments, that is not in effect a general disarmament, can be reached.

VI.

There is no provision securing arbitration.

Arbitration is the submission of a dispute to persons chosen by the contestants, or in choosing whom they can have a voice. It differs from a court, in that the latter is presided over by permanent judges, appointed by constituted authority.

If one nation should desire to arbitrate and the other should not, all that it would be necessary for the latter to do (Articles XII and XIII) would be to remain passive. The complaining nation would then be forced to seek the "recommendation" of the Executive Council. This procedure was doubtless inserted in deference to the advocates of The League to Enforce Peace, which adopted the idea of a Council of Conciliation for so-called non-justiciable cases.

Furthermore, the nine members that would compose it, the duties of whom, as planned in the draft, would be largely administrative, would probably be selected with but little regard for their ability as jurists, but preponderately for political or diplomatic prestige. The litigant nation would, however, have one more chance. Under Article XV, it might have the dispute referred to the body of delegates, "provided that such request must be made within fourteen days after the submission of the suit." The action of the body of delegates would still be an attempt at a judicial proceeding; but it would be before a body of men averaging no higher as jurists than those of the ordinary legislature and which might number two hundred. The result of this would be, that, when the case of a small nation would come before it, few would attend; but, when that of a great nation would come up, no effort would be neglected to facilitate the coming of

those members whose sentiments were known to be favorable, or to deter from coming, those differently disposed.

The only jurisdiction, therefore, that would be secured to a nation under the draft is that of a court composed of one or the other body of political appointees.

[With the unanimity rule, any of the five big powers (and the four other favored powers) would, especially if the justice of its cause were in doubt, avoid arbitration and endeavor to remain before the Council [Assembly]; for it would have a member there, while its opponent perhaps would not; and in any event his simple failure to vote would be all that would be necessary to save his country from the enforcement of a majority "recommendation" unfavorable to it.]

[*While the statement in brackets is not exact, the Committee followed the suggestion by inserting clauses excluding from the voting the delegates from the nations in dispute* (*Article 15, 7th and last paragraphs*) *and adding the new penalty of expulsion from the League, also containing that clause* (*Article 16*).]

The right to arbitrate differences should be secured to each nation and this means a provision for the power to force its adversaries to submit and conform to the decree.

The procedure presented in "The Isolation Plan" would secure this right before bodies of men selected in a manner to combine pre-eminence and impartiality in the greatest degree conceivable. It is only essential to have the machinery for the convocation of an arbitral court, or commission, with the force of the League back of it. Application of the penalty for non-compliance can be made by a body convened in the same manner.

VII.

The meaning of the phrase "after the submission of the suit" needs clarification. Is a nation to have the privilege, within twenty days after its opponent has gone to the trouble of presenting its proofs and argument, to simply declare that it will go before the larger court?

VIII.

The giving of discretion to the Executive Council in regard to the execution of a decree (Article XIII), would deprive the scheme of the great value of the application of an unvarying and certain penalty.

The invariable decree of non-intercourse for the refusal to submit a dispute to the jurisdiction of the League (Article XVI), would be for an offense of the highest nature, as it would be for an affront to the judicial sovereignty of the League, denominated "an act of war." So, also, would be the case of non-compliance with a decree; and no reason is apparent for the failure to adopt the same sanction for both.

That would make it possible to destroy armaments, the harbingers of war.

(*Suggestion followed in principle, by extending to cases arising under Articles 13 and 15, the sanction of non-intercourse; but the whole was rendered valueless by conditions*).

IX.

Article XIV, charging the Executive Council with the formulation of "plans for the establishment of a permanent court of international justice," simply provides, that, "when established," it shall *be competent* to hear

and determine. Jurisdiction is simply optional; and, as the Second Conference of the The Hague labored in vain to establish such a court, because no agreement could be reached between the large and the small states as to the plan for selecting the permanent judges, there is not much probability of its erection; and less, that it would be used, should some plan be forced through.

X.

Under Article XVI, there might be a legitimate conflict of opinion as to whether a nation had, or had not, disregarded its covenants under XII, and the fact should be established by a tribunal.

(*Followed: by the adoption of a new procedure by the "Members of the League"; who presumably would, under this Article, act through representatives sitting in a body; but how the latter are to be convoked or who are to constitute them, is nowhere prescribed. All of the Members are already represented by the Delegates, and the simple use of the word "Assembly" would have sufficed; but that was evidently not desired, as, to have designated them and omitted the Members of the Council, would have seriously belittled the importance of the latter.*)

The "*ipso facto*" arrangement means that the establishment of such a breach and the action of each nation would be left to its legislature, from which would follow a variety of conclusions; and the lack of co-operation, which is the essential condition for the efficiency of restraint by non-intercourse, would be wanting.

XI.

The power of Amendment is so limited that a nation that might derive some advantage from the plan as first adopted, could unreasonably prevent a generally recognized amelioration of great value or even necessity. This should especially be considered in view of the fact that no provision is made for the limitation of the duration of the League.

(*Followed in that a Member may withdraw on two years' notice* (*Article 1*), *but its liberation is conditional*).

A few modifications in the application of the principles adopted in this draft, seventy-five per cent. of which is already in accordance with "The Isolation Plan," would obviate the foregoing weaknesses and be quite in harmony with American ideas. There is no necessity for surrendering legislative power and establishing a superstate in order to make arbitration effective. Matters can be arbitrated, without further legislation, as they have been in the past, upon recognized principles of right; and when international legislation is necessary it can be undertaken by conventions in which each country can keep its rights under its own control until the extent to which it will surrender them in each instance is defined and deemed satisfactory.

In the last analysis, the draft is based upon the idea that all adhering states, each time that occasion to take action under the recommendation of the Council would arise, would act and act favorably; and, as immediate action would often be essential to the successful operation of the League, they would act immediately. The Hague Conventions have been based upon such expectations.

The Isolation Plan simply comprises a Convention, under which a nation could place another in default for not arbitrating, or complying with a decree; and, the fact established, secure a decree of non-intercourse under fixed rules, independent of legislative action, or that of any standing official, save the Clerk of the Court of The Hague, under the responsibility of the Permanent Administrative Council, as at present existing. All States could join at once under it on an equal footing.

The nations to day can have their choice between:

Great armaments, a superstate and domination by a small group;

Moderate armaments, but always looking to them for ultimate defense, with recurring charges of exceeding limits, constant suspicion, unending expense and the necessity for close co-operation, involving the surrender to a central group of more and more sovereignty; and

General disarmament, save for national police purposes and guarding the seas from piracy, dependence on non-intercourse, no permanent body except a committee on disarmament (Article IX), the inauguration of a curtailment of expenses for armament that would permit of the rehabilitation of the countries desolated by war, and practically no surrender of sovereignty, save to arbitrate and comply according to fixed rules.

The last is the only safe plan for a republic and, if America would but insist upon it, she could secure it for the good of the World.

March 10, 1919.

ANNEX IV

THE COVENANT OF THE LEAGUE OF NATIONS

THE HIGH CONTRACTING PARTIES:

In order to promote international co-operation and to achieve international peace and security

by the acceptance of obligations not to resort to war,

by the prescription of open, just and honourable relations between nations,

by the firm establishment of the understandings of international law as the actual rule of conduct among Governments, and

by the maintenance of justice and a scrupulous respect for all treaty obligations in the dealings of organized peoples with one another,

Agree to this Covenant of the League of Nations.

ARTICLE I.

The original Members of the League of Nations shall be those of the Signatories which are named in the Annex to this Covenant and also such of those other States named in the Annex as shall accede without reservation to this Covenant. Such accession shall be effected by a Declaration deposited with the Secretariat within two months of the coming into force of the Covenant. Notice thereof shall be sent to all other Members of the League.

Any fully self-governing State, Dominion, or Colony not named in the Annex may become a Member of the League if its admission is agreed to by two-thirds of the

Assembly, provided that it shall give effective guarantees of its sincere intention to observe its international obligations, and shall accept such regulations as may be prescribed by the League in regard to its military, naval and air forces and armaments.

Any Member of the League may, after two years' notice of its intention so to do, withdraw from the League, provided that all its international obligations and all its obligations under this Covenant shall have been fulfilled at the time of its withdrawal.

ARTICLE 2.

The action of the League under this Covenant shall be effected through the instrumentality of an Assembly and of a Council, with a permanent Secretariat.

ARTICLE 3.

The Assembly shall consist of Representatives of the Members of the League.

The Assembly shall meet at stated intervals and from time to time as occasion may require at the Seat of the League or at such other place as may be decided upon.

The Assembly may deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world.

At meetings of the Assembly each Member of the League shall have one vote, and may have not more than three Representatives.

ARTICLE 4.

The Council shall consist of Representatives of the Principal Allied and Associated Powers, together with Representatives of four other Members of the League. These four Members of the League shall be selected by the

Assembly from time to time in its discretion. Until the appointment of the Representatives of the four Members of the League first selected by the Assembly, Representatives of Belgium, Brazil, Spain and Greece shall be members of the Council.

With the approval of the majority of the Assembly, the Council may name additional Members of the League whose Representatives shall always be members of the Council; the Council with like approval may increase the number of Members of the League to be selected by the Assembly for representation on the Council.

The Council shall meet from time to time as occasion may require, and at least once a year, at the Seat of the League, or at such other place as may be decided upon.

The Council may deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world.

Any Member of the League not represented on the Council shall be invited to send a Representative to sit as a member at any meeting of the Council during the consideration of matters specially affecting the interests of that Member of the League.

At meetings of the Council, each Member of the League represented on the Council shall have one vote, and may have not more than one Representative.

ARTICLE 5.

Except where otherwise expressly provided in this Covenant or by the terms of the present Treaty, decisions at any meeting of the Assembly or of the Council shall require the agreement of all the Members of the League represented at the meeting.

All matters of procedure at meetings of the Assembly or of the Council, including the appointment of Committees to investigate particular matters, shall be regulated by the the Assembly or by the Council, and may be decided by a majority of the Members of the League represented at the meeting.

The first meeting of the Assembly and the first meeting of the Council shall be asummoned by the President of the United States of America.

ARTICLE 6.

The permanent Secretariat shall be established at the Seat of the League. The Secretariat shall comprise a Secretary General and such secretaries and staff as may be required.

The first Secretary General shall be the person named in the Annex; thereafter the Secretary General shall be appointed by the Council with the approval of the majority of the Assembly.

The secretaries and staff of the Secretariat shall be appointed by the Secretary General with the approval of the Council.

The Secretary General shall act in that capacity at all meetings of the Assembly and of the Council.

The expenses of the Secretariat shall be borne by the Members of the League in accordance with the apportionment of the expenses of the International Bureau of the Universal Postal Union.

ARTICLE 7.

The Seat of the League is established at Geneva.

The Council may at any time decide that the Seat of the League shall be established elsewhere.

All positions under or in connection with the League, including the Secretariat, shall be open equally to men and women.

Representatives of the Members of the League and officials of the League when engaged on the business of the League shall enjoy diplomatic privileges and immunities.

The buildings and other property occupied by the League or its officials or by Representatives attending its meetings shall be inviolable.

ARTICLE 8.

The Members of the League recognize that the maintenance of peace requires the reduction of national armaments to the lowest point consistent with national safety and the enforcement by common action of international obligations.

The Council, taking account of the geographical situation and circumstances of each State, shall formulate plans for such reduction for the consideration and action of the several Governments.

Such plans shall be subject to reconsideration and revision at least every ten years.

After these plans shall have been adopted by the several Governments, the limits of armaments therein fixed shall not be exceeded without the concurrence of the Council.

The Members of the League agree that the manufacture by private enterprise of munitions and implements of war is open to grave objections. The Council shall advise how the evil effects attendant upon such manufacture can be prevented, due regard being had to the necessities of those Members of the League which are not able to manufacture

the munitions and implements of war necessary for their safety.

The Members of the League undertake to interchange full and frank information as to the scale of there armaments, their military, naval and air programs and the condition of such of their industries as are adaptable to war-like purposes.

ARTICLE 9.

A permanent Commission shall be constituted to advise the Council on the execution of the provisions of Articles 1 and 8 and on military, naval and air questions generally.

ARTICLE 10.

The Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League. In case of any such aggression or in case of any threat or danger of such aggression the Council shall advise upon the means by which this obligation shall be fulfilled.

ARTICLE 11.

Any war or threat of war, whether immediately affecting any of the Members of the League or not, is hereby declared a matter of concern to the whole League, and the League shall take any action that may be deemed wise and effectual to safeguard the peace of nations. In case any such emergency should arise the Secretary General shall on the request of any Member of the League forthwith summon a meeting of the Council.

It is also declared to be the friendly right of each Member of the League to bring to the attention of the Assembly

or of the Council any circumstance whatever affecting international relations which threatens to disturb international peace or the good understanding between nations upon which peace depends.

ARTICLE 12.

The Members of the League agree that if there should arise between them any dispute likely to lead to a rupture, they will submit the matter either to arbitration or to inquiry by the Council, and they agree in no case to resort to war until three months after the award by the arbitrators or the report by the Council.

In any case under this Article the award of the arbitrators shall be made within a reasonable time, and the report of the Council shall be made within six months after the submission of the dispute.

ARTICLE 13.

The Members of the League agree that whenever any dispute shall arise between them which they recognize to be suitable for submission to arbitration and which cannot be satisfactorily settled by diplomacy, they will submit the whole subject-matter to arbitration.

Disputes as to the interpretation of a treaty, as to any question of international law, as to the existence of any fact which if established would constitute a breach of any international obligation, or as to the extent and nature of the reparation to be made for any such breach, are declared to be among those which are generally suitable for submission to arbitration.

For the consideration of any such dispute the court of arbitration to which the case is referred shall be the Court

agreed on by the parties to the dispute or stipulated in any convention existing between them.

The Members of the League agree that they will carry out in full good faith any award that may be rendered, and that they will not resort to war against a Member of the League which complies therewith. In the event of any failure to carry out such an award, the Council shall propose what steps should be taken to give effect thereto.

ARTICLE 14.

The Council shall formulate and submit to the Members of the League for adoption plans for the establishment of a Permanent Court of International Justice. The Court shall be competent to hear and determine any dispute of an international character which the parties thereto submit to it. The court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly.

ARTICLE 15.

If there should arise between Members of the League any dispute likely to lead to a rupture, which is not submitted to arbitration in accordance with Article 13, the Members of the League agree that they will submit the matter to the Council. Any party to the dispute may effect such submission by giving notice of the existence of the dispute to the Secretary General, who will make all necessary arrangements for a full investigation and consideration thereof.

For this purpose the parties to the dispute will communicate to the Secretary General, as promptly as possible, statements of their case with all the relevant facts and

papers, and the Council may forthwith direct the publication thereof.

The Council shall endeavor to effect a settlement of the dispute, and if such efforts are successful, a statement shall be made public giving such facts and explanations regarding the dispute and the terms of settlement thereof as the Council may deem appropriate.

If the dispute is not thus settled, the Council either unanimously or by a majority vote shall make and publish a report containing a statement of the facts of the dispute and the recommendations which are deemed just and proper in regard thereto.

Any Member of the League represented on the Council may make public a statement of the facts of the dispute and of its conclusions regarding the same.

If a report by the Council is unanimously agreed to by the members thereof other than the Representatives of one or more of the parties to the dispute, the Members of the League agree that they will not go to war with any party to the dispute which complies with the recommendations of the report.

If the Council fails to reach a report which is unanimously agreed to by the members thereof, other than the Representatives of one or more of the parties to the dispute, the Members of the League reserve to themselves the right to take such action as they shall consider necessary for the maintenance of right and justice.

If the dispute between the parties is claimed by one of them, and is found by the Council, to arise out of a matter which by international law is solely within the domestic jurisdiction of that party, the Council shall so report, and shall make no recommendation as to its settlement.

The Council may in any case under this Article refer the dispute to the Assembly. The dispute shall be so referred at the request of either party to the dispute, provided that such request be made within fourteen days after the submission of the dispute to the Council.

In any case referred to the Assembly, all the provisions of this Article and of Article 12 relating to the action and powers of the Council shall apply to the action and powers of the Assembly, provided that a report made by the Assembly, if concurred in by the Representatives of those Members of the League represented on the Council and of a majority of the other Members of the League, exclusive in each case of the Representatives of the parties to the dispute, shall have the same force as a report by the Council concurred in by all the members thereof other than the Representatives of one or more of the parties to the dispute.

ARTICLE 16.

Should any Member of the League resort to war in disregard of its covenants under Articles 12, 13, or 15, it shall *ipso facto* be deemed to have committed an act of war against all other Members of the League, which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the covenant-breaking State, and the prevention of all financial, commercial, or personal intercourse between the nationals of the covenant-breaking State and the nationals of any other State, whether a Member of the League or not.

It shall be the duty of the Council in such case to recommend to the several Governments concerned what effective military, naval, or air force the Members of the League

shall severally contribute to the armed forces to be used to protect the covenants of the League.

The Members of the League agree, further, that they will mutually support one another in the financial and economic measures which are taken under this Article, in order to minimize the loss and inconvenience resulting from the above measures, and that they will mutually support one another in resisting any special measures aimed at one of their number by the covenant-breaking State, and that they will take the necessary steps to afford passage through their territory to the forces of any of the Members of the League which are co-operating to protect the covenants of the League.

Any Member of the League which has violated any covenant of the League may be declared to be no longer a Member of the League by a vote of the Council concurred in by the Representatives of all the other Members of the League represented thereon.

ARTICLE 17.

In the event of a dispute between a Member of the League and a State which is not a Member of the League, or between States not Members of the League, the State or States not Members of the League shall be invited to accept the obligations of membership in the League for the purposes of such dispute, upon such conditions as the Council may deem just. If such invitation is accepted, the provisions of Articles 12 to 16 inclusive shall be applied with such modifications as may be deemed necessary by the Council.

Upon such invitation being given the Council shall immediately institute an inquiry into the circumstances

of the dispute and recommend such action as may seem best and most effectual in the circumstances.

If a State so invited shall refuse to accept the obligations of membership in the League for the purposes of such dispute, and shall resort to war against a Member of the League, the provision of Article 16 shall be applicable as against the State taking such action.

If both parties to the dispute when so invited refuse to accept the obligations of membership in the League for the purposes of such dispute, the Council may take such measures and make such recommendations as will prevent hostilities and will result in the settlement of the dispute.

ARTICLE 18.

Every treaty or international engagement entered into hereafter by any Member of the League shall be forthwith registered with the Secretariat and shall as soon as possible be published by it. No such treaty or international engagement shall be binding until so registered.

ARTICLE 19.

The Assembly may from time to time advise the reconsideration by Members of the League of treaties which have become inappliacble and the consideration of international conditions whose continuance might endanger the peace of the world.

ARTICLE 20.

The Members of the League severally agree that this Covenant is accepted as abrogating all obligations or understandings *inter se* which are inconsistent with the terms thereof, and solemnly undertake that they will not hereafter enter into any engagements inconsistent with the terms thereof.

In case any Member of the League shall, before becoming a Member of the League, have undertaken any obligations inconsistent with the terms of this Covenant, it shall be the duty of such Member to take immediate steps to procure its release from such obligations.

ARTICLE 21.

Nothing in this Covenant shall be deemed to affect the validity of international engagements, such as treaties of arbitration or regional understandings like the Monroe Doctrine, for securing the maintenance of peace.

ARTICLE 22.

To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilization and that securities for the performance of this trust should be embodied in this Covenant.

The best method of giving practical effect to this principle is that the tutelage of such peoples should be entrusted to advanced nations who by reason of their resources, their experience or their geographical position can best undertake this responsibility, and who are willing to accept it, and that this tutelage should be exercised by them as Mandatories on behalf of the League.

The character of the mandate must differ according to the stage of the development of the people, the geographi-

cal situation of the territory, its economic conditions and other similar circumstances.

Certain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognized subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone. The wishes of these communities must be a principle consideration in the selection of the Mandatory.

Other peoples, especially those of Central Africa, are at such a stage that the Mandatory must be responsible for the administration of the territory under conditions which will guarantee freedom of conscience and religion, subject only to the maintenance of public order and morals, the prohibition of abuses such as the slave trade, the arms traffic and the liquor traffic, and the prevention of the establishment of fortifications or military and naval bases and of military training of the natives for other than police purposes and the defence of territory, and will also secure equal opportunities for the trade and commerce of other Members of the League.

There are territories, such as South-West Africa and certain of the South Pacific Islands, which, owing to the sparseness of their population, or their small size, or their remoteness from the centres of civilization, or their geographical contiguity to the territory of the Mandatory, and other circumstances, can be best administered under the laws of the Mandatory as integral portions of its territory, subject to the safeguards above mentioned in the interests of the indigenous population.

In every case of mandate, the Mandatory shall render

to the Council an annual report in reference to the territory committed to its charge.

The degree of authority, control, or administration to be exercised by the Mandatory shall, if not previously agreed upon by the Members of the League, be explicitly defined in each case by the Council.

A permanent Commission shall be constituted to receive and examine the annual reports of the Mandatories and to advise the Council on all matters relating to the observance of the mandates.

ARTICLE 23.

Subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon, the Members of the League:

(*a*) will endeavor to secure and maintain fair and humane conditions of labour for men, women, and children, both in their own countries and in all countries to which their commercial and industrial relations extend, and for that purpose will establish and maintain the necessary international organizations;

(*b*) undertake to secure just treatment of the native inhabitants of territories under their control;

(*c*) will entrust the League with the general supervision over the execution of agreements with regard to the traffic in women and children, and the traffic in opium and other dangerous drugs;

(*d*) will entrust the League with the general supervision of the trade in arms and ammunition with the countries in which the control of this traffic is necessary in the common interest;

(*e*) will make provision to secure and maintain freedom of communications and of transit and equitable treatment for the commerce of all Members of the League. In this connection, the special necessities of the regions devastated during the war of 1914-1918 shall be borne in mind;

(*f*) will endeavor to take steps in matters of international concern for the prevention and control of disease.

ARTICLE 24.

There shall be placed under the direction of the League all international bureaux already established by general treaties if the parties to such treaties consent. All such international bureaux and all commissions for the regulation of matters of international interest hereafter constituted shall be placed under the direction of the League.

In all matters of international interest which are regulated by general conventions but which are not placed under the control of international bureaux or commissions, the Secretariat of the League shall, subject to the consent of the Council and if desired by the parties, collect and distribute all relevant information and shall render any other assistance which may be necessary or desirable.

The Council may include as part of the expenses of the Secretariat the expenses of any bureau or commission which is placed under the direction of the League.

ARTICLE 25.

The Members of the League agree to encourage and promote the establishment and co-operation of duly authorized voluntary national Red Cross organizations

having as purposes the improvement of health, the prevention of disease, and the mitigation of suffering throughout the world.

ARTICLE 26.

Amendments to this Covenant will take effect when ratified by the Members of the League whose representatives compose the Council and by a majority of the Members of the League whose Representatives compose the Assembly.

No such amendment shall bind any Member of the League which signifies its dissent therefrom, but in that case it shall cease to be a Member of the League.

ANNEX

I. ORIGINAL MEMBERS OF THE LEAGUE OF NATIONS SIGNATORIES OF THE TREATY OF PEACE

United States of America
Belgium
Bolivia
Brazil
British Empire
  Canada
  Australia
  South Africa
  New Zealand
  India
China
Cuba
Ecuador
France
Greece
Guatemala
Haiti
Hedjaz
Honduras
Italy
Japan
Liberia
Nicaragua
Panama
Peru
Poland
Portugal
Roumania
Serb-Croat-Slovene State
Siam
Czecho-Slovakia
Uruguay

ANNEX V

MEMORANDUM ON THE COVENANT OF THE LEAGUE OF NATIONS

The Drafting Committee of the Paris Conference on the constitution for The League of Nations, having adopted the greater part of the suggestions presented in my Memorandum on the Draft (published March 1-10, and of which you may have received a copy), I am encouraged to make further comments on the revised instrument, as adopted April 27, 1919, and called the "Covenant."

The most important of the suggestions in that Memorandum which have been followed, "VIII," resulted in the amendment of Article 16 so as to apply to obligations under Article 13 and 15, as well as Article 12, supposedly to extend the sanction of non-intercourse to force nations to comply with decisions, as well as to submit to the jurisdiction of the League; as it was pointed out, that the failure to comply, was as much an affront to the authority of the League, as the failure to submit.

At the same time, the clause from Article XII of the Draft, was transposed to Article 16, making "the resort to war" an essential element in a case for the application of the penalty of non-intercourse, which is equivalent to the rejection of that mode of enforcement, because of the

infrequency of cases combining those conditions in ordinary times.

The Committee also has added to the Draft, in giving heed to the following suggestions:

"I": the word "any" in setting forth the matter with which the body of delegates (Assembly) may deal; "II": the first paragraph in Article V, defining the votes required for decisions; "III": to remove ambiguity, the catagoric inclusion by name, in the "Annex," of British dominions and colonies; "VI": the additions of the new penalty of expulsion from the League (Article 16) and of clauses in the seventh and the last clauses of this new provision (Article 16) excluding the nations in dispute from voting; "VIII": the extension, if only in principle, of the sanction of non-intercourse; "XI": the limitation for the duration of the League, at least as far as each member is concerned by the provision for withdrawal in Article I; and, I might add, the substitution throughout the instrument of the word "Members" for "high-contracting parties," suggested in an interview, published in the New York Times, of February 16, 1919.

The manner in which these amendments have been made, however, does not leave the Articles free from serious defects:

Conformity to suggestion "I" by supplying the word "any" before "matter," in Article II of the Draft, has obviated the distinction made between the Council and the body of delegates in the general conferment of powers to those bodies; but, while allurements are now held out stronger than ever that the larger body is to constitute the democratic representation of all the nations, by calling it the "Assembly," instead of the "body of delegates,"

and by bestowing directly upon it the right to agree upon new members of the League (Article I), instead of leaving that power to be exercised by the States directly (Article VII of the Draft), the Assembly is, nevertheless, to have even less authority than was proposed under the Draft, for the Council will doubtless assume the prerogative of passing upon the "effective guarantees of sincerity" of the candidate nation and will thus have a complete check upon such action. (Reference is again made to suggestion "I," as to the emptiness of the "powers" of this body, as the exclusive right to act is expressly conferred on the Council whenever any real action is to be taken.)

* * * * * (1)

The Committee did not act upon the principal suggestion under "VI," namely: that the Covenant does not secure arbitration to any nation. This might have been done by the adoption of the simple and very satisfactory device of selecting arbitrators through eliminating from a panel, such as the Roll of the Members of the Court of the Hague, and arbitration thereby have been made compulsory.

* * * * * (1)

Suggestion numbered "VII," referring to but a technical defect, the necessity of clarification as to the phrase "after the submission of the suit," used in Article XV, regarding the removal of a case to the body of delegates, now Assembly, has simply not been grasped. As it stands, it would give to a litigant, should it, after submission, have doubt as to the favorable attitude of the Council sitting as a Court, the right to remove the case to the Assembly, and oblige its opponent to retry it there. Were the language:

(1) Parts omitted appear in Annex VII.

submission to the jurisdiction, it would probably express the intention of the framers and permit the removal before trial. This alternative tribunal would have eighteen British judges and be otherwise unsuitable to function as a court.

The plan of bestowing upon the Council despotic power is heightened by a new paragraph in Article XV, further limiting the knowledge as to its proceedings in which the public may be be permitted to share, although involving the highest interests of mankind: "*Any member* of the League *represented on the Council* may make public a statement of the facts of the dispute and of its conclusions regarding the same." This can have no other purpose than to indicate that no member of the League not represented on the Council shall make such statement; which, too, the Council might construe as giving it power to impose silence on the citizens and subjects of all countries.

* * * * *

Suggestion "III," has been answered in the "Annex" and it appears that Great Britain will be represented by six members and will have the right to send eighteen delegates to the Assembly, whereas France (Germany) and America can have but three members each. While the Assembly has been virtually shorn of all power, it may, nevertheless, meet and may have a very influential voice in formulating desires and the preponderating voice of Great Britain, represented, in effect, by eighteen delegates, will not be without its effect in shaping resolutions.

While this and the allotment of six votes may appear but natural to British Lords, it is not the American idea of equality; and, I venture to say, not that of Englishman generally, for fairness appeals to them, and they surely

cannot consider it fair that they should be so largely represented, while 100,000,000 people are to have but three delegates and one vote. It creates a league within the League, which is in direct conflict both with the President's Points, the provisions of Article 20 and the idea that this is to be a league of "nations," or of autonomous peoples.

The danger to the permanency of the League in vesting such great power in one individual as is provided for the Secretary-General was emphasized in suggestion "IV." This fear is not allayed by the undue haste in the appointment of the Secretary-General. It apparently would not have suited the British Ministry to have risked any slip in securing the office, by the appointment of a provisional secretary.

* * * * *

Can British Lords not perceive that such over-reaching —asserted as a matter of course—the very grounds for all the unfriendly feeling of other peoples for generations against them—would very soon disrupt an association, such as is proposed under the "Covenant," if, indeed, it should ever be inaugurated? While the prejudices of the moment might suffice to secure the adhesion of the Americans to it without serious study of its features, it would be but to sow the seeds of war; for, their outraged feelings, when occasions would arise which would bring squarely to their attention the disadvantages under which they had been placed, coupled with the knowledge of their greater power in numbers and resources would tend to lead them precipitately to results which the world is now striving to prevent. It is but to delude oneself to suppose that this strain can be borne because the pact is cemented by the name "Covenant," a word devised to hold peoples to the

doing of things against their inclinations and which violates the very idea of mutuality that must support any convention that is to endure.

America should avoid "special alliances." This is the Third Point of the President's Metropolitan Opera House address and the burden of Washington's Farewell Address, pronounced after years of experience, and doubtless embodies the consensus of the very wise men who surrounded him at the founding of the Republic. Her form of government is not suitable for such an association, even from a selfish aspect. The object of special alliances is almost invariably to secure special advantages at the cost of the rights of others; and the stronger member of the association diplomatically is bound to secure the advantages in it, until the rupture arrives.

Under the British system, a small group of men, some hereditary and some those who, being privileged to stand at by-elections in any district, can always count on soon being returned to Parliament, should they lose their seats, are able to remain indefinitely in control of affairs and they can, therefore, maintain policies even for centuries. This is especially so in regard to their foreign relations. Under the American system, on the contrary, one administration is followed by another with an entirely new set of men, usually belonging to the party holding the opposite views; so that the continuity of any policy is almost an impossibility and sooner or later it must yield to the advantage of the more persistent member of the combination.

The only sure course for such a democracy as America, is to abjure beneficial arrangements and adopt only those based on disarmament and simple equality, which the people can usually understand and guard.

The key-stone of the whole plan for the abolition of war lies in the accomplishment of naval disarmament, expressed in the Second and Fourth of the President's Fourteen Points of Janurary 8, 1918:

> "2. Absolute freedom of navigation upon the seas, outside of territorial waters, alike in peace and war, except as the seas may be closed in whole or in part by international action for the enforcement of international covenants."

No exception was taken to this clause during the many months that America gathered up her strength and poured it unstintingly into the cause of the Allies, supposing that silence while accepting, meant acquiescence, as a matter of honor, in the President's proposals for the benefit of mankind and the democratization of the world, and it was not until the time for further hostility had passed and it would have been too horrible a crime to have allowed more men to be slaughtered, that the "allied governments" interposed an objection reserving to themselves complete freedom of action on this point, to which the President declined to assent.

The Fourth of those Points, however, was accepted without qualification.

> "4. Adequate guarantees given and taken that national armaments will be reduced to the lowest point consistent with domestic safety."

It is to be noted that the word "domestic" is employed which could hardly be construed so as to permit anything further than what would be necessary for policing territorial seas (but which should doubtless be enlarged, by international accord, to concerted action over the globe to prevent piracy).

I think that I have demonstrated in "The Isolation Plan" that there is but one plan upon which an agreement can be reached as to the disarmament of naval forces: a horizontal elimination of all ships of war over a certain size and of such other ships as could easily be converted into them, supplemented by a further reduction of smaller craft; and, as the argument is somewhat lengthy, I refer to the subject at page 26.

Instead, therefore, of resorting to all manner of suppression of intention or to the stultifying each-do-as-you-please provision in the Covenant as to what will be done in this most vital matter, which leaves all nations in ignorance, creates suspicions as to good faith, arouses threats as to competitive increases, and is apt to wreck the hopes for a League of Nations, why is not a general provision, which could be adequately set forth in a few short lines, made in the convention?

The writer's sister, Mary E. Blymyer, has made the following pertinent observation in regard to Article I of the revision, which declares: "Any member of the League may, after two years' notice of its intention so to do, withdraw from the League, provided that all its international obligations under the Covenant shall have been fulfilled at the time of its withdrawal." Should its obligations be unfulfilled, it must presumably remain; and yet it may have given two years' previous notice, for the very reason that it saw ahead some obligation, since imposed by the Council, that it would not assume.

The provision for amendment requires the ratification by all of the members of the League whose representatives compose the council. Can such unanimity ever be ex-

pected in a body of the size of nine, whose interests will always differ and conflict, unless accompanied by the most shameful trading of rights on each occasion to satisfy the most avaricious member?

* * * * *

It is announced that the Council has been provisionally formed, and that its first concern has been to consider the use of the sanction of non-intercourse to force Germany to sign the treaty of peace. By that very act, it declares itself incompetent to assume the great office of the judicial tribunal of the world; for at the outset, it arrogates to itself the offices of accuser and marshal, as well as that of judge. Such an institution is no court; it is an oligarchy, or Star Chamber.

The Paris Conference permits the greatest opportunity for beneficent legislation that has ever occurred and it should be embraced with consummate and corresponding skill. Instead of that, its "Covenant" is still the crudest production that I have ever examined; and a familiarity with five languages has given me direct access to the laws of most of the countries of the globe, both ancient and modern. It is still a jumble of commands, promises, illustrations and sermons, and abounds in contradictory and needless clauses; for instance, the preamble emphasizes "a scrupulous respect for all treaty obligations," when the general plan of the convention is to supersede the many treaties that contain provisions of preference; Article 13 contains the express engagement of the members to carry out any arbitration award, and the preceding Article that they shall in no case resort to war "until three months after the award;" the first paragraph in Article 13 adds nothing to the provisions of Article 12; in Article 15 the

League is made to "*hereby*" undertake the punishment for a supposititious breach; the context belies the preamble; the term, "fully self-governing Dominion, or Colony" is the veriest sham, etc., etc.

* * * * *

The chief reason for the existence of the Council arises under the "Mandatory" system, which is but a cunning way of popularizing the practice of dominating peoples who do not wish to be dominated, an idea in conflict with that of independence, now termed self-determination, the very air of which Americans are so proud to be able to breathe. Attention is called to the following observations regarding it: The Allies and especially France are necessarily to remain neighbors of the Germans; the latter, being a younger people, possess greater power of recuperation; with their activity and intelligence, if confined to their limited territory, they will, in the course of not many years, again develop great intensity of power; and it was because such a development that they bade defiance to the whole remaining world.

Why, then, do these neighbors desire them to be confined to their small territory and repeat this development? Would they not prefer to see them locate in the Antarctic? And would it not be prudent for them to recognize this fact and proceed in accordance with natural laws by restoring the captured colonies and thus encourage the Germans to disperse in great numbers to cultivate them, which the latter might now do, with no military object to keep them in Germany?

Would it not even be preferable to those Americans who so fear the Germans, to know that they were moving

thither, rather than migrating to Mexico? And would this not relieve their minds further as to the Monroe Doctrine?

The colonies could be restored to them on terms providing for ultimate independence, such as those set forth at page 46 in "The Isolation Plan" (and which should apply to all colonies); backward countries be permitted to work out their own salvation under recompense of the enjoyment of equal rights with all nations, and the strengthening influence of self-dependence; and their trade secured by the exchange of advantages, and not by the presence of foreign troops.

The adoption of this Plan would solve the Irish Question, as disarmament would remove the last objection of the British Government to the granting to Ireland of the self government that it has promised her.

It should be remembered, that arms were not laid down on the basis of unconditional surrender; but on that of a negotiated peace and a negotiated league—"not a balance of power, but a community of power," as The President expressed it—and the willing co-operation of Germany, now ready to give it, is essential for the very peace that the Allies require for the resumption of their industrial prosperity, instead of which they wish to prolong strife by twisting the German lion's tail[1] under a guarantee from America that she will prevent it from turning and rending them.

[1] Imagine America joining in an agreement to insure the integrity of a nation that exasperates its neighbor beyond endurance by setting African troops, under revolting conditions, over it and attempts to exact indemnity destined to prostrate it utterly, in total disregard of the terms under which arms were laid down!

The President never expressed more axiomatic truths than in his address to the Senate, on January 22, 1917, on peace without victory:

> "There must be not a balance of power, but a community of power; not organized rivalries, but an organized common peace.
>
> * * * * *
>
> "The statesmen of both of the groups of nations now arrayed against one another have said, in terms that could not be misinterpreted, that it was no part of the purpose they had in mind to crush their antagonists.
>
> "It must be a peace without victory. Victory would mean peace forced upon the loser, a victor's terms imposed upon the vanquished. It would be accepted in humiliation under duress at an intolerable sacrifice and would leave a sting, a resentment, a bitter memory upon which terms of peace would rest, not permanently, but only as upon quicksand. Only a peace between equals can last. Only a peace every principle of which is equality and the common participation in a common benefit.
>
> "The right state of mind, the right feeling between nations is as necessary for a lasting peace as is the just settlement of vexed questions of territory or of racial and national allegiance."

And in his reply to the Pope, on August 1, 1917:

> "Responsible statesmen must now everywhere see, if they never saw before, that no peace can rest securely upon political or economic restrictions meant to benefit some nations and cripple or embarrass

> others, upon vindictive action of any sort or any kind of revenge or deliberate injury."

While he lost these ideas for a time in the cry of "Peace with Victory," he reverted to them in the following of the Five Points, on September 27, at the Metropolitan Opera House, which were specially mentioned in the conditions under which arms were laid down by the Central Powers:

> "First, the impartial justice meted out must involve no discrimination between those to whom we wish to be just and those to whom we do not wish to be just. It must be a justice that plays no favorites and knows no standard but of equal rights of the several peoples concerned,"

These are the American ideas and their realization is what her people ask, and all that they ask.

They have been reading from day to day of the ever-growing and out-rivaling claims of the several Allies and the apparent acquiescence of The President until the above features have all disappeared and in their place has come a coalition designed to produce unquenchable hatred, and to be followed, at the earliest occasion, by a new balance of power and a repetition of the world war. Already the Allies have forgotten that it was America that placed victory in their hands and saved their armies from being wiped out. Not only is their gratitude not sufficient to accord to their benefactor this boon for the good of all the nations and which would cost them nothing, but, overwhelmed doubtless by a realization of their losses, which they did not at first appreciate, they have overlooked a serious aspect in their conduct: their foe laid down arms at a time when it could have still inflicted the loss of per-

haps hundreds of thousands of men and placed itself under their protection, according to the rules of war, on the assurance that the world order set forth by the President would be established, and under most definite limitations as to the payments that would be required of it. How can the Allies construe the disregard of these conditions, but as the disavowal of their contractual obligations under civil law, and the exaction of increased terms, now that the foe has thus rendered itself helpless, but as treachery under military law,[1] and especially when that would place the latter's present and coming generations practically in bondage? Of what value is a claim so wanting in moral force?

Is America, on whom rests no obligation to aid in the collection of such damages—for the Germans express their readiness to perform the agreed conditions—and is pleased to call herself righteous, to be a party to such conduct? Is she to be offered obligations thus acquired in satisfaction for the advances that she has made to the Allies and to be cunningly drawn into co-operation in forcing their payment by accepting them?

[1] This phase of international law has not been expressed strong enough. We Americans have considered it to be barbarous to give no quarter on the battlefield and civilization has always been shocked by the reference to the ancient Roman practice of slaughtering the vanquished, for which the name "Carthage" stands as the synonym; but it has been left for the advanced nations of our time to induce the enemy to surrender under fixed terms and then, when helpless, to impose additional burdens which entail enslavement and wide-spread death because the physical relief that it had the right to expect is further withheld. The enemy had the right to know this in advance, so that it might have acted accordingly. It introduces the precedent, that hereafter no dependence is to be placed in the terms of capitulation; which carries with it the terrible consequence, that, in the future, no war may end short of extinction.

We Americans, who are pleased to consider ourselves enlightened, have permitted our representatives to sit at the peace table and not even offer a remonstrance at such perfidy; yes more, we have continued, and are still continuing, to maintain our troops in the country of the vanquished to aid in exacting these excesses.

The Isolation Plan presents an arrangement for bringing an offending nation to justice and enforcing the decree by processes that function automatically, along scientific lines and aims at simple justice; whereas the League Plan with its Council, requiring unanimity of action, and even the assent of each nation before co-operation in each instance can be expected of it, is shorn of scientific bases and placed upon favoritism; for all that it is necessary for a nation to do, to avert action unfavorable to it, is to induce some nation in the Council to refrain from voting; not to mention the fact that the Council is to be run by a small coterie.

While the machinery of the League Plan may contain all of the cogs (and more) necessary for successful operation, they are not geared together. They are not connected with the mainspring and each time that performance will be required of it, adjustments will be necessary involving personal action, which may not always arrive. It is contrived to pass through the same miserable experience as the Articles of Federation of our forefathers; and has no more value than the First and Second Hague Peace Conventions, any number of which might have been had, without a world war.

Under international law, the enemy should be made to pay all that which, when under arms and free to contract, it agreed to pay, but not one cent more; and, the figure, not having been then fixed, should be left to an arbitration, in which the enemy should have its right in naming the arbitrators and a fair chance to present its side of the contention.

By common consent, under the terms of capitulation the military cause resolved itself into a contractual obligation, under the rules of municipal law.

Indeed, this disregard of the terms of capitulation, gives the enemy a good cause for damages arising from this breach of contract and should even form the basis for a counterclaim before the arbitration commission that will one day be called upon to establish the amount of the reparations.

"The Isolation Plan" not only contains the principles pertaining to arbitration, but the reasons supporting them, and YOU ARE EARNESTLY EXHORTED TO STUDY THEM; for the writer is just as confident that they are the basic rules upon which the system of arbitration will some day rest, as was Richard Wagner, that his compositions were music, during the long years when almost no one would recognize the fact. It furthermore, is in full accord with America's needs and desires.

May 20, 1919.

All consideration of this contractual obligation was lost to sight at the Paris Conference, in the impassioned demand that the enemy should pay to the utmost of its ability and the general greed there manifested; and now, the clamor arises, that the amount should be fixed, on May 1, at four hundred billion marks, gold, or one hundred times that which the enemy took from France fifty years ago, although the French have never ceased to consider that the latter exaction was crushing. As an economical conception, it is fantastic and can only result in disheartening the enemy and further endanger the tranquillity of the nations in their domestic affairs.

The above aspect is simply the legal one; and, unless conformity to it is observed, there can be no settlement of the war that will endure.

The expedient of first establishing a foundation for such an exaggerated claim, by causing the enemy to admit that it was solely responsible for the war, can serve no useful purpose, as it can only be done under duress, and the sober-minded all over the world have always accepted the maxim that an authentic history of a great war can never be written for a generation or so afterward and they cannot be made to believe that the last war, with the years of complications that preceded it, can be an exception to that rule.

This note and this book are written from a scientific point of view, in the interest of a world order, the importance of which is far greater than any particular contention now existing, no matter how formidable that may be, and are but reiterations of principles advocated for over thirty years.

ANNEX VI

ENFORCEMENT UNDER THE COVENANT

(Revised from Articles in New York Sun of August 7th and September 9, 1919.)

The President, on the 4th inst., at Indianapolis, made the following statement as to the power of the League in reference to enforcement:

> "If any member of that League, or any nation not a member, refuses to submit the question at issue either to arbitration, or to discussion by the Council, there ensues automatically, by the engagements of this Covenant, an absolute economic boycott."

Under the Covenant, a nation undertakes but three (really but two) obligations with respect to submitting its differences for settlement and makes but one engagement that it will carry out the decision: in Article 12, it agrees to submit a dispute to arbitration, or to inquiry by the Council; in Article 13, if justiciable under one of four categories, to arbitration; and in Article 15, any not settled by arbitration, to the Council (the second and third being comprehended in the first.) Only in Article 13, in the case of arbitration, is there an agreement to carry out the award. No obligation is made to carry out any "recommendation" under Article 15, and it would seem, that that term has been chosen with great care instead of the usual one, decree, that it might carry no significance of compulsion.

It, therefore, follows:

Regarding enforcement by the "boycott," provided only in Article 16, that it may take place only when a nation "resorts to war;" and, even then, only when "in disregard of its covenants (obligations) under Articles 12, 13 and 15."

As war is permitted under these Articles in certain circumstances, and as the criterion regarding submission is its justiciability—a test, because of the indefiniteness of which the United States Senate has refused to ratify peace treaties—the "boycott" cannot "automatically ensue." The fact of such a breach, must first be established (but no conjecture can be made by what body); and furthermore, for this purpose, a unanimous decision (as provided under Article 5, this action, not being governed by an express exception to that rule) must be had, despite the fact that the delinquent Member has not lost its seat in the Council or in the Assembly.

All that can happen to a delinquent that does not submit to arbitration and takes no step in the matter, is to suffer the report of a recommendation unfavorable to it, under Article 15, if the complaining nation chooses to apply to the Council or Assembly, for an inquiry. No power is conferred on the Council in this Article to order a "boycott" or any other punishment, and other extraordinary consequences would follow:

If the report were unanimous, the Members of the League, and not the delinquent nation, would incur an obligation; as they "will not go to war with (against) any party to the dispute which complies;"

If the report were not unanimous, the Members would "reserve to themselves the right to take such action as

they shall consider necessary." If, therefore, the rule of interpretation, *expressio unius est exclusio alterius*, were applied, the Members would curiously not be as free to act when unanimous, as when not.

If any action were taken, it would not be done through the Council, or the Assembly, but directly by the nations as Members. How often could a sufficiently large number of them to make a boycott effective, arrive at an agreement to impose it, if called upon to act after the commission of the offense—not war, against a nation friendly perhaps to many of them, and too, when no provision is made in the Covenant for their meeting as Members of the League.

The delinquent Member could only be expelled from the League, under the last paragraph of Article 16, for a refusal to carry out an award in case it had submitted to arbitration.

Therefore, under the Covenant, not only the "boycott" is almost wholly an illusion, but also all other effective means of compulsion.

ANNEX VII

FOR THE CONSIDERATION OF THE SENATORS

The Dangers that the Covenant with the Reservations, Would still Present.

"THE COVENANT" AS AN ACHIEVEMENT OF DIPLOMACY

For a nation to obtain all that it desires by negotiation, is to show great diplomacy; to do so with such skill that those with which it is negotiating are not aware of what it is accomplishing, is consummate art; but diplomacy can overreach itself.

Fiction could not have presented a more favorable situation for British Lords, the most experienced masters in this game, than was spread before them at the Paris Conference. They met there a number of nations which could easily be ignored on the ground that they had not contributed, or contributed actively, to the results of the war; others which, while having done so, were heavily indebted to them, and yet were looking to them for immediate succor; and America, with certain humanitarian pretensions that could not be overlooked, as dependence must be placed upon her for material aid. America, however, was represented in effect by only one person, and he was without experience in Old World politics, would seek counsel from none of his colleagues, and possessed British tendencies and pure British blood. They came with the reputation of always having secured, through

these means, other peoples to fight their wars and of then retiring the holders of the dominant position. They had been maintaining for their nation the position of the Mistress of the Seas, requiring others to confer with them as to changes in ownership of non-British territories and to submit to inspection in her ports before crossing the seas and they had no intention of losing this advantage by subjecting their acts to the jurisdiction of outside bodies or of any which they did not control.

When they perceived that the demand of America and of their own people for the formation of a league of nations must be heeded, they began to co-operate; but resolved to see to it, that, if such a union must be formed, they would at all times direct its management, and that it should not be given any authority that could ever be exerted against them. They recognized the possibilities that such a union might afford in morally strengthening their control over their colonies could they but extend among nations the practice of colonial domination as they had done by helping to install America in the Philippines and of their great chances of quietly securing the German colonies, by furthering all claims of their Allies for reparation and vengeance directly against Germany, and moving quickly while attention was fastened on the Conference and the quarrels that were certain to arise in it.

The first great diplomatic move was to eliminate from the real negotiations all nations but four, as that reduced the task of belaboring many delegates into the acceptance of their views in the formation of the draft to be finally rushed through the Conference.

The easy substitution of members in the drafting committee, or Commission, made it possible for a large part

of the Cabinet to run over to Paris to advise, if not participate directly, in the work and to allay opposition. As above indicated, the only delegate that was in a position to insist upon the adoption of provisions contrary to their desires, was the American, and all that it was necessary for them to do with him, was to permit him to insert such provisions as he wished, and then, by deft turns, in which the Covenant abounds, to render nugatory the effects.

With seeming magnanimity, they refrained from asking for the office of greatest dignity, but they well knew the importance of a chancellor's office, and so, before offering the presiding office to any other nation, they stripped it of all important functions and combined them with those of the Secretary General.

Indeed, they even made this last-named office superior to the Council itself, as will be seen below.

Again, not to arouse antagonism through precipitancy, they desisted from indicating in the Draft, and, upon its publication, from announcing, that the reason why the first incumbent of this exalted office of Secretary General would be chosen by the Commission, was because they were determined to assure themselves that the person to be selected would, without any possibility of a miscarriage, be an Englishman under their domination; and for the same reason, in providing for the representation of "colonies, dependencies and dominions" in the Body of Delegates (Assembly) they suppressed the fact that it was only to increase British power.

They then prevailed upon the Members of the Commission to choose a young Englishman from the British Foreign Office for the post of Secretary General, the expectation doubtless being, that, as there was no term fixed for

his tenure of office, or provision for removal, he would hold it for a generation or two.

Under Article 15, the powers of the Secretary General are high above the Council. If a dispute arises between nations, that they cannot settle by arbitration, they are not to address the President of the Council, or even the Council as a body, but the Secretary General "who will make all necessary arrangements for a full investigation and consideration thereof. For this purpose the parties to the dispute will communicate to the Secretary General," etc., the Article reads. He thereby will become the person, and the only person, to receive direct communication of the serious controversies of the nations; and, as the qualification "necessary" involves the exercise of discretion, he alone will determine whether, when, where, how and what these "arrangements" shall be. Holding a coordinate office under the Covenant, in which his duties are defined, and being the only person appointed by all of the Nations, he will surely feel himself above taking further orders from the Council, the Members of which are only designated by single States, and may even consider that all communications made to him are personal, for he is only to publish statements of cases (claims) etc., when the Council shall direct (Art. 15) and collect and distribute other information under like direction (Art. 24); and, as he is not obliged to consult the Council as to the "arrangements," he need not even inform it of an international dispute until the arrangements are made; from which follows: that, if a matter does not proceed to that stage, the Council may even never know of it.

He is not obliged to attend at all times at the seat of the League, or even to be there, save when the Council or

Assembly may decide to meet there, instead of some other place (Arts. 4 and 3.) He will probably continue to be found at the quarters in London given over to the League, near the Foreign Office; and, as it could not be expected that he would always act without discussing problems, he would naturally turn to his old associates in that Office, some of whom, being members of the Council, or the Assembly, would have a legitimate interest in such information. Those associates would thereby always have the great advantage of acquiring an earlier and fuller knowledge of all of the strifes between nations than could the representative of any other country. Indeed, even did the Secretary General not avail himself of the formal excuse contained in the Covenant, that he could only give out information when directed by the Council, and desired to help applicants, it would be quite impossible for him to inform the latter of the many phases in a matter which had reached his ear, while his daily associates might absorb almost the whole of it. A more perfect exclusively British information bureau, available for the expansion of the Empire, could not have been designed.

One is forced to stop and ask oneself, what kind of service an outside nation would obtain from this British official, did it make a claim against his own Government, or, for instance, did the "self-governing" dependency, India, make one against it.

Another stroke of diplomacy was their renunciation of the choice of London, as the seat of the League; but, it will be observed that after declaring it to be established at Geneva, provision was made in the following paragraph that "the Council may at any time decide that the seat of the League shall be established elsewhere" (Art. 7).

It remains to be seen how much of the Secretariat, already established in London, will be moved to Geneva. Furthermore, the Secretary General may always "arrange" to have disputes before the Council, or the Assembly, heard in London; so that, if America is ever to make a claim against Great Britain or any member of the Empire, it may be necessary to contest it in a very chilly atmosphere.

There is no provision that the delegates of the "colonies, dependencies and dominions" to the Assembly shall be residents of them, respectively, and they are apt to be, therefore, the strongest men in the British Cabinet and high British functionaries, accustomed for years to team work,[1] or, if they do come from those divisions, persons usually in London, aspiring to the peerage and amenable to the Ministry. If the seat of the League at Geneva does become the usual meeting place, they can attend with little inconvenience, compared with American and many other delegates; and even if not present, a discussion can be kept up, in an emergency, long enough to enable them to arrive by aeroplane. This is of no small importance, as all voting is based on "the members of the League represented at the meeting" (Art. 5). This covenant itself is an illuminating example of what can be accomplished in the way of securing advantage through the presence of numbers of a nation's strongest men and their intelligent co-operation.

Each colony, dependency or dominion represented in the Assembly has a vote in that body regarding the dispute of a British matter or of one affecting another British

(1) Already Lord Robert Cecil has been made a Delegate for South Africa, and France has remonstrated.

colony and each is eligible for representation in the Council.

Finally, they assumed, as far as it was possible for them so to do, to name the American representative on the Council, whose term of office would possibly be, like that of the Secretary, for life, by providing that the first meetings of both the Assembly and the Council should be summoned by "the President of the United States of America," their kinsman; and to clinch this nomination, arranged to move the Council to Washington for the meeting, like the cage for the bird, when it would have been too embarrassing for America to have refused to accept their choice. In this, they all but succeeded.

While British Lords have through diplomacy secured the above advantages in the management of the League, their chief hold would be through the checks that they have introduced:

They have made any disarmament which does not reserve for them superior power, impossible, through a provision first, for unanimity as to the plan to be proposed to the nations; and then, for favorable action thereon by the several governments (Art. VIII), giving a practical veto-power to the British Parliament.

Non-intercourse is only to be applied in case a member government shall resort to war (when not authorized) in disregard of "its covenants (obligations) under Articles 12, 13 and 15"; but those articles are carefully worded, so that breaches will not result in judgments, or decrees, but only in "recommendations," save in case resort has been had to arbitration on some minor disputes, now arbitrated, when a failure to carry out an award can only result in a proposal by the Council as to what steps should

be taken to give effect thereto (Art. 13), but with no power to enforce them, or expulsion from the League (Art. 16), unless the nations unite and mete out some other punishment.

Refusal to comply with the "recommendations" of the Council or Assembly (Art. 15) simply leaves the matter open.

The whole Covenant, so far as it concerns the forcing of a nation to settle its differences without resort to war, is simply a blind, and indicates that the British Lords had no intention to create an effective disarmament agreement and have acted with as little regard for their obligations to uphold the "Wilson Points" as they have shown for their promises in regard to Ireland and Egypt. They are trifling with America, although America has been somewhat to blame for having given them the opportunity.

By accepting the Covenant, America could point to no gain through the war—Arbitrations, Conciliation Councils and Advisory Commissions, when all parties to a dispute are willing, can be formed under the Hague Court rules, or even without them.

Now they realize that they have failed to unite enough American dupes to bring about the acceptance by America of this diplomatic noose and figment of negations as the gift to her of "What she wants"—of "Her ideals"; and, to recover their footing, they insinuate that the failure has been on the part of America, by blandly assuming to explain that really her refusal thus far does not expose her to the charge of bad faith or repudiation.

Were it not rather in order for them to state by what rule of honor they are side-stepping their obligation to uphold the "Wilson Points," which some day they will

be forced to observe, let us hope at the behest of the English people themselves.

The critical point has arrived; so fearful are these Lords of losing their diplomatic trick that they are willing that America may enter under almost any reservations (also pure negations), if only she will enter; for, should she do so, they would be able to refer to the Covenant as America's substitute for the "Wilson Points" and claim that she had foreclosed the further discussion of them.

The acceptance by both belligerents of the "Wilson Points" constitutes in itself the Treaty of Peace; and, under the principles of English law, any subsequent treaty forced on the losing side is either void, because of duress, or the lack of consideration.

Proposed conventions based on them with no exalted official, have been worked out with precision at the expense of thirty years' time, and it behooves America to insist upon their realization now, and not, by deferring interest payments and giving other financial aid, to foster the strength of this group which will soon become too powerful to notice even America's rights.

February 6th, 1920.

Paris Conference

The covenant was adopted, without discussion, by the five confreres on April 28, 1919.

President Wilson submitted it to the United States Senate on July 10, 1919; the Senate failed by vote of November 19th to ratify, and adjourned; at the following session the Senate re-committed it to the Committee on Foreign Affairs on February 9, 1920, and, by vote of March 19, 1920 again failed to ratify it and ordered it returned to the President.

ANNEX VIII

THE "WILSON POINTS,"

abridged, with a key to some of the pages in "*The Isolation Plan*," where the ideas are to be found.

The Fourteen Points

ADDRESS JOINT SESSION OF CONGRESS, JAN. 8, 1918

I. "Open covenants of peace * * * openly arrived at."

As a uniform system of law is proposed under this Plan, there would be no object in even discussing them privately.

II. "Absolute freedom of navigation on seas outside of territorial waters * * * except by international action to enforce covenants."

"No nation has the sovereign right to use arms beyond its territorial limits * * * open sea, where other nations have an equal right," etc., p. 34. Naval disarmament, save for piracy. Claim 14, p. 2, and pp. 26-29. Art. XXVI Convention, et seq., p. 63.

III. "Removal, so far as possible, of economic barriers."

Water and other ways ("Hinterland" principle), Duties, taxes, etc., pp. 47-48.

IV. "Adequate guarantee given and taken that national armaments will be reduced to lowest point consistent with domestic safety."

"Disarmament must be general, save always for internal police purposes and the prevention of piracy on the seas," p. 29.

Provisions for compulsory arbitration and general disarmament under sanction of non-intercourse. Convention, Arts. on disarmament, XXV et seq., p. 62 *et seq.* Claim 14, p. 2, "Stronger Assurance," 53.

V. Self-determination of "all colonial claims."

Provision for periodical plebiscites on self-government in all colonies, pp. 46-8.

VIII. "Evacuation of French territory * * * and wrong done France by Prussia in 1871, should be *righted.*"

Statu quo ante and plan for demarcation of racial sections of Alsace and Lorraine and self-determination therein by plebiscites, pp. 48-9.

XIV. "General association of nations * * * guarantees * * * territorial integrity to great and small alike."

"Territorial Integrity. The recognition by the Convention of only independent states and the treatment of them as equals in their international relationship, disposes of the question of territorial integrity" * * * p. 31.

Equal rights in matters of justice, Claim 5, p. 1, and pp. xxi and 10. Equal recognition, p. 46.

(VI, VII, IX, X, XI, XII, and XIII refer to rights of self-determination of peoples in Russia, Belgium, Italy, Austria, Hungary, Roumania, Turkey and Poland, respectively, and follow ideas cited under V and VIII, above.)

FOURTH OF JULY (1918) SPEECH, AT MT. VERNON

I. "Destruction of every arbitrary power * * * or reduction to virtual impotence."

"No nation should dominate," p. 50.

II. "Settlement of every question * * * on basis of free acceptance * * * by the people immediately concerned."

"The co-operation of both belligerents is essential for the establishment and maintenance of any future relationship that is to endure," p. 52.

III. "Consent of all nations to be governed by principles of honor—promises * * * sacredly observed—handsome foundation of mutual respect for right."

"Without injury to national pride * * * no rancor," p. 52.

IV. "Organization of Peace * * * which shall check every invasion of right and serve to make * * * justice * * * secure by affording a * * * tribunal of opinion to which all must submit."

Whole Isolation Plan.

LIBERTY LOAN SPEECH, SEPT. 27, '18, N. Y. METRO. OPERA HOUSE

I. "Impartial justice—no discrimination between those to whom we wish to be just and those to whom we do not wish to be just."

"The mode of constituting the (arbitral) courts is the most complete device to assure impartiality." Claim, 6, p. 1 and p. 13 et seq.

II. "No special or separate interest of any nation or group of nations can be made the basis of any part of the settlement."

"It (The Isolation Plan) would afford an absolute equality between large and small nations in matters of right." Claim 5, pp. 1, 17 and 50.

III. "No Leagues or alliances * * * within the League of Nations."

"It would lend no encouragement to alliances between nations." Claim 4, p. 1.

IV. Repetition of III and "no employment of any form of economic boycott or exclusion except as power in League as means to discipline and control."

"It would be wholly scientific. * * * The sanction (of isolation) would be the most drastic. The application of the sanction would not be directed toward the support of any side of the contention. The function of the body that would administer

it would simply be to establish a fact which should be determined in less than a day." Claims 9-12, pp. 1-2.

"Non-compliance would be a breach of the Convention * * * (p. 22.)

V. "All agreements and treaties must be made known."

An Arbitral Court would not recognize an agreement compromising its jurisdiction or enforce those prejudicial to the interests of third nations, unless the latter had had previous notice. When the matter in nowise affects other nations the reason for making it known would not exist.

ANNEX IX

COMMENTS ON THE DRAFT SCHEME FOR THE PERMANENT COURT.

This work throughout advocates the employment of arbitration commissions, dwelling upon the advantages of such a system over that of a court with permanent judges, and at certain places, lays stress upon the impossibility of agreeing upon a plan for appointing judges that would be satisfactory to litigant nations. The Council, having been charged, under Article 14, to prepare such a plan for the establishment of the Permanent Court of International Justice, and having failed, delegated an Advisory Committee of Jurists to do so, in its stead, and they have submitted a Draft Scheme, which, it is submitted, is so defective that no court that can inspire confidence and have permanency can flourish under it, if indeed, it can ever be erected.

The Report provides that the court shall consist of 15 members: 11 judges and 4 deputy-judges. It contemplates the naming of two persons by each nation of good standing, which names—probably from sixty to a hundred—are to be arranged by the Secretary-General of the League, alphabetically. Thereupon, the Council and the Assembly concurrently are to vote upon them; and, in the first instance, those candidates who obtain an absolute majority of both bodies shall be considered elected, etc.

Why the names should be arranged alphabetically, can have no other significance than that they are to be voted

upon in that order; and there is no way provided by which the name of a candidate may be taken up for consideration in any other order. America, for instance, will not wish to be guided in presenting her candidates by such a qualification. She may prefer to name Mr. Washington and Mr. Webster, rather than Mr. Abbott and Mr. Aaron; and yet, the court may be filled before the names Washington and Webster are reached.

However, in the Assembly there may be no objection and it will be far the easier way to combine and give a majority to every candidate, or to one from each nation, and the Council will then have the whole duty of culling out the surplus names.

In the Council, however, the matter will simply resolve itself into one of trading. The representatives of America, Great Britain and France will maintain, that their nations, of course, must each be represented; but they will not be able to count upon securing the five necessary votes, unless they also agree with two others, that their nations shall also be represented in the Court. These five may not represent the big five; if they do not, any of those nations omitted will be incensed. There will be, however, six other places to fill with judges, and the struggle of each of the remaining four members of the Council to secure a judge each for his nation, can only be estimated by considering the reverse side of the proposition: what member of the Council could, in behalf of his nation, forego the privilege of demanding a judgeship?

That the nine members of the Council will, therefore, if they have the chance, appropriate nine of the eleven places for their respective nations, is a foregone conclusion.

But, the small nations may perceive this in advance and

conclude, that, as the great nations filled the majority of the places in the Council, it would be but fair, that the small nations should fill the majority of the seats in the Permanent Court; and accordingly, being more numerous in the Assembly, they may combine and only give majorities to candidates from the small nations, and thereby cut off the possibility of permitting the Council to select candidates from their own, the great nations.

Failure under the above procedure, is to be followed by an attempt through a joint committee of three persons from each body; but a committee cannot overcome the obstacles any more than can the bodies themselves, for the nature of the difficulty is still that emphasized at pages xxi, 10 and 17-18: the jealousy and fear, respectively, between the large and small nations.

No more effective plan for steering both bodies into a deadlock could be devised and any attempt to overcome it will lead to trading in a way that will cause the Shantung incident to fade into insignificance and make impossible the high degree of confidence without which such a court must fail.

While the qualifications in Article 9, that the candidates, as a whole body, should "represent the main forms of civilization and the principal legal systems of the world," are most commendable, they will have as little influence in such a struggle as the Draft-scheme prepares, as the Article has legal value, being wholly without a sanction.

The omission of the chief executive and legislative body from those who are to be consulted by the Members of the Court of the Hague in presenting candidates (Article 6), is somewhat incongruous, as the Members owe their own appointments to those officials.

The whole scheme, while apparently an equal division of the power of appointment between the great and small nations, is simply an extension of the Covenant plan in placing the control of the Court, as well, in the hands of the majority of five of the Council of nine, for these five will be able to prevent the admission of any person who is not satisfactory to them to a place on the bench.

With experience in conflicting opinions in existing courts in mind, it is difficult to perceive any value in an advisory opinion on an hypothetical question given by "from three to five members" of a court of from fifteen to twenty-one, as provided in Article 36.

It is likewise difficult to conceive the justification for the renunciation of the principle of handing down minority opinions in cases in the Court (Article 56), after that right had been expressly provided in regard to inquiries before the Council or the Assembly, in Article 15 of the Covenant.

Although by the Covenant, which must be considered the organic law of the League, the nations limited the agreed jurisdiction to the arbitration of cases of certain categories (Article 13), the Advisory Committee has assumed that the Council may empower the Court "without any special convention giving it jurisdiction" to take connaisance and try such cases (Article 34, Draft-scheme), and even do so in cases of default (*idem*, Article 52).

There is no provision in the Covenant for an appeal from the decision of the Council. If what has been heralded as the most eminent body of jurists ever assembled can recommend such action by the Council in the face of the Covenant provision for Amendments, where will the Council limit its authority?

[THE END]

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